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ABSTRACT

The Legal References: Air Pollution Control Regulations Manual is the last in a set of 21 manuals (AA 001 009-001 029) used in APEX (Air Pollution Exercise), a computerized college and professional level "real world" game simulation of a community with urban and rural problems, industrial activities, and air pollution difficulties. The manual presents the legal framework for the APEX Air Pollution Control District, including federal and state legislation, case law, a description of the typical civil and criminal remedies available in air pollution cases, and appeals procedure. The game simulation procedure and required computer facilities are further described in resumes for AA 001 009 and 001 010. (PR)

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Environmental Protection Agency

APEX

Air Pollution Exercise

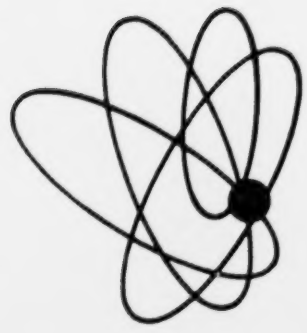
Simulation Exercises

VOLUME 21

LEGAL REFERENCES: AIR POLLUTION CONTROL REGULATIONS

AA 001029

ENVIRONMENTAL PROTECTION AGENCY

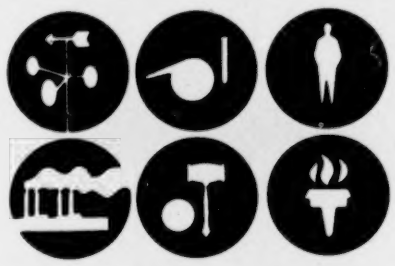


APEX VOLUME 21
LEGAL REFERENCES: AIR POLLUTION CONTROL LEGISLATION

This course is designed for professional persons in the field of air pollution control. The course manual has been prepared specifically for the trainees attending the course, and should not be included in the reading lists of periodicals as generally available.

CONDUCTED BY

The Office of Manpower Development's
Institute for Air Pollution Training



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APEX• VOLUME 21
LEGAL REFERENCES: AIR POLLUTION CONTROL LEGISLATION

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LIST OF MANUALS USED IN THE APEX GAME SIMULATION

Volume 1: Game Director's Manual

Volume 2: Computer Operator's Manual

Volume 3: Air Pollution Control Officer's Manual

Volume 4: City Politician's Manual

Volume 5: County Politician's Manual

Volume 6: Industrialist's Manual: No. 1, Shear Power Company

Volume 7: Industrialist's Manual: No. 2, People's Pulp Plant

Volume 8: Industrialist's Manual: No. 3, Rusty's Iron Foundry

Volume 9: Industrialist's Manual: No. 5, Caesar's Rendering Plant

Volume 10: Industrialist's Manual: No. 6, Dusty Rhodes Cement Co.

Volume 11: Developer's Manual: No. 1

Volume 12: Developer's Manual: No. 2

Volume 13: Developer's Manual: No. 3

Volume 14: Developer's Manual: No. 4

Volume 15: Developer's Manual: No. 5

Volume 16: Developer's Manual: No. 6

Volume 17: Developer's Manual: No. 7

Volume 18: City Planner's Manual

Volume 19: County Planner's Manual

Volume 20: Reference Materials

Volume 21: Legal References: Air Pollution Control Legislation

ENVIRONMENTAL PROTECTION AGENCY

Office of Air Programs • Office of Manpower Development.
Institute for Air Pollution Training

The Institute for Air Pollution Training (1) conducts training for the development and improvement of State, regional, and local governmental air pollution control programs, (2) provides consultation and other training assistance to governmental agencies, educational institutions, industrial organizations, and others engaged in air pollution training activities, and (3) promotes the development and improvement of air pollution training programs in educational institutions and State, regional, and local governmental air pollution control agencies.

One of the principal mechanisms utilized to meet the Institute's goals is the intensive short term technical training course. A full time professional staff is responsible for the design, development and presentation of these courses. In addition the services of scientists, engineers and specialists from other EPA programs, governmental agencies, industry, and universities are used to augment and reinforce the Institute staff in the development and presentation of technical material.

Individual course objectives and desired learning outcomes are delineated to meet specific training needs. Subject matter areas covered include process evaluation and control, atmospheric sampling and analysis, field studies and air quality management. These courses are presented in the Institute's resident classroom and laboratories and at various field locations.

Harry P. Kramer, Sc. D.
Director, Office of Manpower Development

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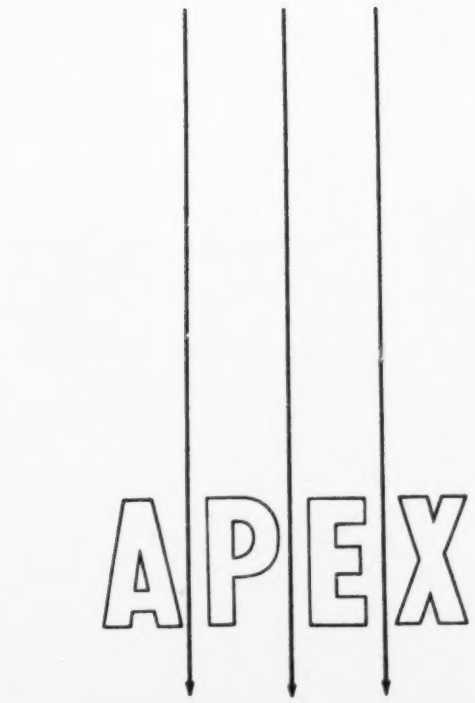


Air Pollution Exercise

Simulation Exercises conducted by the Institute for Air Pollution Training

The responsibility of the Federal Government's Office of Air Programs to provide leadership and assistance to State and local air pollution control agencies in the recruitment and development of qualified personnel is a major theme of the 1970 Clean Air Act. The Office of Air Programs, (OAP) in conjunction with the University of Southern California and the University of Michigan, has created and developed a simulation exercise identified as APEX (Air Pollution Exercise). This exercise establishes a dynamic atmosphere in which the trainees participate in a "real world" simulation involving a community with urban and rural problems, industrial activities, and a variety of air pollution control problems.

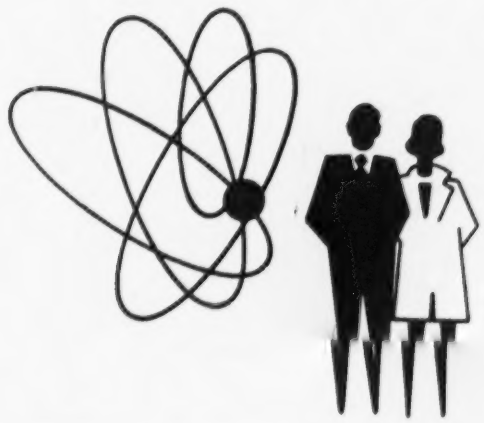
Current and projected uses of APEX have been developed through several of the University Consortia established in conjunction with OAP's Office of Manpower Development.

The use of simulation exercises for the training of air pollution control professionals offers two immediate and vital benefits:

1. A means is provided for a working application of theoretical knowledge; the learner applied information and skills to "real life"

situations. In addition, motivation directed toward additional learning results from participation in seeking solutions to the problems.

2. The focus is provided for solving problems through an interdisciplinary approach, where the interrelationship between "formal" areas of study and application becomes evident.



Students participating in APEX assume the roles of a number of decision makers: city and county politicians, city and county planners, developers, industrialists, air pollution control officers, and concerned citizens. Realistic data are supplied for each role, and the students are required to make decisions that are then analyzed by the computer. Next, the results of the decisions are presented as new situational data representing a year of "actual time." Students participating in these programs — which place special emphasis on air pollution problems —— employ a wide range of skills and knowledge in a variety of areas. Additional opportunities for growth are provided through seminars, lectures, texts, and working contact with recognized authorities in a number of professions.

Within the overall format of the simulation exercise, emphasis is placed upon specific areas through the use of special situations, for example, hearings on air pollution standards or legal actions brought against a particular industry.

Additionally, preparations are underway to introduce APEX as a graduate course at OAP's new Technical Center in the fall of 1971 for students from the Triangle Universities Consortium. In addition to its use at the University of Southern California, APEX is now being conducted as a graduate course at the University of Illinois at Urbana and at Harvard University as part of an Environmental Education program for both graduate and undergraduate studies.

SECTION B. PREFACE

LEGAL REFERENCES

This chapter presents the legal framework for the APEX County Air Pollution Control District, including legislation (federal and state), case law, a description of the typical civil and criminal remedies available in air pollution cases, and appeals procedure.

The State enabling legislation, as incorporated in the State Health and Safety Code, establishes some broad guidelines for agency organization and operation. The more specific aspects of the agency's activities (internal organization, abatement strategies, administrative procedures, etc.) are left to the discretion of the agency and its governing board.

SECTION 2. FEDERAL LEGISLATION

The Federal Government first became involved with the air pollution problem in 1955 when the Congress enacted legislation authorizing the government to conduct research and to give technical assistance to the states for the control of air pollution. The Federal Government continued in these activities until the adoption of the Clean Air Act in 1963. This Act supplanted all previously enacted national air pollution control legislation and substantially broadened the Federal Government's role in air pollution control.

Significant features of the Clean Air Act include provisions for the establishment of a system for providing grant support to the states to ease the financial burden in developing, establishing, or improving regional air pollution control programs. Another important feature of the Act is that it provided a mechanism for federal abatement action with respect to interstate polluters.

Following a series of amendments designed to control the emissions of automobiles, a new piece of federal legislation, the Air Quality Act of 1967, was enacted. This Act further strengthened existing control programs and added significantly to the support of research activity. In using a regional approach, the Act called for the coordinated action of Federal, state and local governments as well as the various segments of the industrial community.

Some of the more significant provisions of the Act are outlined below:

1. The Department of Health, Education, and Welfare will define the broad atmospheric areas of the Nation and will designate specific air quality control regions.

2. The Department will develop and publish air pollution criteria indicating the extent to which air pollution is harmful to health and damaging to property. The Department will also provide detailed information on the cost and effectiveness of techniques for the prevention and control of air pollution.

3. As soon as air quality criteria and data on control technology are made available for a pollutant or class of pollutants, the States will be expected to begin developing air quality standards and plans for the implementation of these standards. They will have 90 days to submit a letter indicating that they intend to set standards, 180 days to set the standards, and an additional 180 days to develop plans for implementing them.

4. Air quality standards will be developed and applied on a regional basis. Wherever an air quality control region includes parts of two or more States, each State will be expected to develop standards for its portion of the region.

5. If the Secretary of Health, Education, and Welfare finds that the air quality standards and plans for implementation of a region are consistent with the provisions of the Air Quality Act, then those standards and plans shall take effect.

6. If a State fails to establish standards, or if the Secretary finds that the standards are not consistent with the Act, he can initiate action to insure that appropriate standards will be set. States may request a hearing on any standards developed by the Secretary; however, the decision of the hearing board will be binding.

7. States will be expected to assume the primary responsibility for the application of the air quality standards. If a State's efforts prove inadequate, the Secretary is empowered to initiate abatement action.

It is recommended that the student become thoroughly familiar with the full texts of all federal legislation currently in effect.

SECTION 3. STATE LEGISLATION

Early in 1965, the legislature of the state to which APEX County is a legal subdivision, sought to begin a program for the control of atmospheric pollution. As a result, the legislature enacted a comprehensive air pollution control bill, which incorporated provisions into the State Health and Safety Code.

This bill or code was designed principally as enabling legislation, empowering the Boards of Supervisors of the various counties within its jurisdiction to establish air pollution control agencies and for such agencies to propose rules and regulations to their respective air pollution control boards. The code also requires those counties which have established air pollution control agencies to submit recommendations for air quality standards and for specific emission standards to the State Air Quality Board. Both classes of standards may be based upon Federal Air Quality Criteria and Federal source emission data. At present, the State has only one specific emission standard, viz., that for smoke, (see Section 24242 of the State Health and Safety Code).

Below is a summary of the eight articles of the State Health and Safety Code which apply to the control of air pollution. The full text of these articles may be found in Appendix A.

1. The first article, Creation and Functioning of Districts, (Sec. 24198-24212), is essentially enabling legislation granting counties, after hearings and passage by the County Board of Supervisors, the power to establish air pollution control districts. The article also contains procedures for creating such districts, powers of the district, and various legal prerequisites for the creation and establishment of such agencies.

2. Article two (Sec. 24220-24231) deals with the various Officers which will deal with air pollution control in the county agencies

including methods of selection and compensation, as well as descriptions of their duties. The County Board of Supervisors will act as the Pollution Control Board of the County and will pass on provisions of this code, county rules and regulations, and the appointment of a hearing board to rule in administrative matters. The board of supervisors may delegate themselves or a portion of the county board to act as a hearing board, appoint private citizens, designate the APCD to act as the board, or may opt to have no hearing board in which case all legal and administrative actions will first proceed through some administrative body and then to the city or county court system. It is required that some kind of administrative review be established.

3. Article Three (Sec. 24241-24245) sets forth the Prohibitions which will govern the county when a district is formed (as it has in APEX). Sec. 24242 contains the Ringelmann 2 provision for smoke and an equal rating for opacity. The section prohibits discharge of air contaminants which may cause injury and provides the Air Pollution Control Officer (Sec. 24246) with the powers of right to enter premises, detention and inspection of vehicles, and denial of rights as a misdemeanor (Sec. 24246), and the right to issue permits for open burning pursuant to authorization of the county board. The article also contains provisions to allow county agencies to set stricter regulations than authorized by this code. However, variance from other state air quality standards or emission standards, when established, must be taken before the State Air Resources Board. Thus the counties can be more strict than the State (through appeals) but they cannot be less restrictive than the State. The balance of the article addresses itself to prosecution, limitations of the control board, right of civil action, definitions, and liabilities.

4. Article Four (Sec. 24260-24282) contains Rules and Regulations and the authority for county districts to establish said regulations, through passage of the air pollution control board. It requires formal public hearings before enactment of such regulations and gives districts the power to enforce them. This article also contains provisions for county districts to establish a permit system for construction and/or operation of process equipment and control systems for the prevention of air pollution (Sec. 24263, 24264-24280). It also provides details for hearing procedures, appeal, revocations, and penalties. Sections 24281-2 establishes that violation of an air pollution control district regulation shall constitute a misdemeanor, as does failure to provide information required by the district.

5. The series of section on Variances (Sec. 24291-24302) outlines the procedures for a hearing board or the other administrative review body named by the air pollution control board to grant industries or other sources of air contaminants variances from compliance

with the air pollution control regulations. This article details prerequisites for fees, hearings, conditions for issuance of variance, and the length and conditions for each variance.

6. Article Six on Procedures (Sec. 24310-24323) provides details on the hearing board's rights and procedures in holding hearings to discuss regulations, variances, permits or other administrative legal procedures for air pollution control. The articles give the board the right to call witnesses, the right of subpoena, and outlines steps for civil actions in the courts.

7. Creation of Unified Air Pollution Control Districts is provided for in Article Seven of the code (Sec. 24330-24341). After approval in two or more contiguous counties, by vote of their respective boards of supervisors, a Unified Air Pollution Control District will be established. The details for setting specific responsibilities and jurisdiction are outlined in these sections.

8. Finally, Article Eight outlines the State Department of Public Health's commitment to a program of Air Sanitation. It also provides for the State to conduct research and to develop state air quality standards, with recommendations also coming from local air pollution control agencies. The state will also set standards for exhaust emissions from motor vehicles.

SECTION 4. CRIMINAL REMEDIES

The State Health and Safety Code provides that: (a) all violations of the Prohibitions Article of the same said code shall constitute a misdemeanor (Sec. 24253); and (b) all violations of local rules and regulations shall likewise constitute a misdemeanor (Sec. 24281). State law specifies that the municipal courts shall have original jurisdiction in all criminal cases that are misdemeanors, and that the District Attorney* shall act as legal counsel for all county departments and agencies. Thus, the District Attorney will handle all legal matters, civil and criminal, to which ancillaries of the county government are a party, whether the unit of government is the plaintiff or the defendant.

The following narrative describes in detail the typical steps taken by the Air Pollution Control District in filing and preparing a criminal court action against an alleged violator of the local air pollution control rules and regulations. It should be clear that the Air Pollution Control District has not legal authority to make determinations of guilt and/or to exact penalties of alleged violators. The APCD has detection and investigative powers only, and must seek recourse in the courts if they wish to see that a violator is properly punished and/or if they wish to stop a person or company from polluting the air in an amount in excess of legally allowable levels (Injunctions - see Section V). The Court or the jury, upon consideration of all of the evidence, will make a determination as to the guilt or innocence of the alleged violator. If the Court or jury returns a verdict of guilty, the judge will set a penalty, within the limits established by the State Penal Code (Sec. 9073.6) for misdemeanors -

*The Game Director may either act in behalf of the District Attorney or appoint someone to act as a representative of the D.A.

viz., a fine of up to $500 per violation, and/or imprisonment in the County jail for not more than six months.

The Air Pollution Control District will file a criminal action with the Municipal Court whenever an inspector detects and records a violation of the local rules and regulations and/or the State Health and Safety Code.

Technically, the first step in the process is the detection of a violation, and the completion and presentation of a notice of violation to the perpetrator of the alleged violation or to a "responsible" official of the Company causing the alleged violation. The presentation of violation notices is not required by law, but is generally considered to be a proper and beneficial public relations procedure.

The inspector will then either complete or provide the para-legal staff of the APCD with the information necessary to complete a "Request for Complaint" form (see forms specimen #1)*. This form is submitted to the District Attorney for his review. The District Attorney will assess the evidence against the alleged violator and render some judgment as to the strength of the case. If, upon review of the evidence, the District Attorney concludes that the case is without merit, he will recommend that the APCD take no further action. Under the provisions of the State Penal Code, the District Attorney actually has the right to refuse to prosecute in such a case.

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*The forms contained in Appendix B are intended only as examples; game participants are expected to develop simplified versions of these forms for use in the game.

Often, the District Attorney will arrange for an informal meeting involving himself, the alleged violator and the APCD to discuss the circumstances of the case, including evidence and other facts. These meetings are usually closed to the public but there are no legal restrictions on who may attend.

Upon the recommendation of the District Attorney, the APCD will prepare two copies of a "notice of complaint" form for presentation to the District Attorney. The District Attorney will review the complaint and, if approved, he will sign and keep one copy for his files; he will file the other copy with the municipal court, (see forms specimen #2). For separate and additional counts, a form similar to specimen #2a may be used. If this form is used, the defendant will be charged with two or more separate offenses at the time of his arraignment.

The third step in the legal process is the arraignment - formally charging the accused with a crime. State law requires that the defendant receive notification as to the time and place of his arraignment at least 10 days in advance. For corporate bodies, a "summons on Criminal Complaint" form is completed by the APCD and sent to the defendant(s), (see form specimen #3). In the case of private individuals, either a subpoena (see form specimen #3a and 3b) is served, or more commonly, a letter of notification is sent to the defendant (see form specimen #3b) by the APCD.

If the prosecution believes that the defendant is in possession of documents and/or other material which is essential to the presentation of his case, he may file a Declaration for Subpoena Duces Secum (see forms specimen #3c) with the Municipal Court. If the Declaration is accepted, the Court will issue a Subpoena Duces Secum (see forms specimen #3d and 3d2), ordering a person to appear in court as a witness and to bring with him documents or other things in his possession and under his control.

At the time the notification(s) is drafted, a "Declaration for Support of Arrest Warrant", (see forms specimen #4) is filed with the court. The information included on, and attached to this form represents the case, including evidence, of the prosecution. If the defendant fails to appear in court at the time of his arraignment, the judge will order the court clerk to issue a bench warrant for the arrest of the defendant.

The second phase of the arraignment process involves the entering of a plea; the defendant in air pollution cases may plead one of three ways: (1) guilty, (2) nolo contendere, or (3) not guilty. If the defendant enters the first plea alternative, the Court will return a guilty verdict and the judge will pronounce sentence. This sentence shall be prescribed within the limits established by the State Penal Code for misdemeanors, see page 4.1. Under these circumstances, the judge will usually ask if the defendant has taken any steps to remedy the condition in question. If the defendant can present proof of his efforts to control the problem, the judge may: (a) prescribe a nominal sentence, (b) suspend the sentence, or (c) defer sentencing for a reasonable length of time to allow the defendant time to complete his control program; if the defendant can present proof, upon his reappearance before the judge, that he has taken corrective action, the judge may dismiss the case or prescribe one of the first two sentence alternatives.

If the defendant enters a plea of nolo contendere, he is declaring that he will not make an admission of guilt nor will he offer a defense

to the charge(s). It should be noted that the judge has the option of accepting or rejecting a nolo plea. The process to be followed and the sentence options available to the judge in the case of a nolo contendere plea are virtually the same as those for a plea of guilty.

One of the important differences in these two pleas involves a question of liability. If the court returns a guilty verdict, the defendant is especially vulnerable to civil suits by private individuals. This is true because it would have been previously and conclusively established that the defendant had been responsible for the emission of excess pollutants of a particular type on a particular date. The private party bringing a suit against a defendant under such circumstances, need only prove the existence of a chain of causation between the excess emissions and some damage to his person or property.

A person filing for the recovery of loss against a defendant who has entered a plea of nolo contendere must prove both that the defendant was responsible for the pollution and that a chain of causation existed between the pollution and his personal loss.

It is significant to note that approximately 75% of the corporations involved in air pollution criminal cases within the state enter nolo pleas.

If the defendant enters a plea of not guilty, the judge will set a date for trial and will ask the defendant if he wishes to have a jury or a non-jury trial. The defendant has the right to waive a jury trial either at this time or at the time of his trial. Also, the judge may select any one of these options in dealing with the defendant in the pre-trial period. The judge may: (a) release the defendant on his own

recognizance, (b) set bail, or (c) remand the defendant to the County Sheriff for custody.

The attorney for the defense may make a variety of motions at the time of the arraignment. The most common form of motion is a request for a continuance. If such a motion is granted, the judge will set a new date for arraignment. The motion for continuance is frequently used by the defense as a delay tactic to give him more time to prepare his case; to give the defendant time to control his pollution problem; to await the outcome of other trials, appeals or public debate; etc.

From the time the "Request for Complaint" form is filed with the District Attorney, until the final disposition of the case in the trial courts, the Air Pollution Control District will offer its full assistance to the prosecution. Such assistance may consist of advice on the engineering and other technical aspects of the case; the supplying of expert witnesses; the supply of a list of "standard" questions to ask of the inspector and other witnesses; aid in the selection of jury members; and the supplying of evidence and exhibits, including a certified copy of the Ringelmann Chart (U.S. Department of the Interior, Bureau of Mines); etc.

SECTION 5. CIVIL REMEDIES

The second class of legal actions that may involve the Air Pollution Control District are civil remedies. This class of actions may be subdivided into: (a) those actions which may be initiated against a public or private person or corporations by the APCD for the purpose of stopping the emission of air contaminants; or (b) those actions which may be initiated against the APCD by a public or private person or corporation for the purpose of reviewing certain regulatory actions taken by the District which affect the activities of the above mentioned persons or corporations.

For the purposes of air pollution control, these remedies shall consist of a group of injunctions of varying degrees of expediency and severity. The Air Pollution Control District may initiate such an action through the District Attorney's Office - i.e., the District Attorney will file for the issuance of an injunction before the APEX County Superior Court for the purpose of enjoining an emission source to cease its polluting activity in the name of the People of the State.

The APCD may take such action when they are persuaded that irreparable damage may occur as a result of the continuation of the problem, or when they feel that the problem will be one of a continuing type, and/or when the polluter shows little interest in attempting to control the problems. The injunction options available to the APCD are described below.

The first type of injunction that may be sought by the APCD is the "Temporary restraining order". This is an ex parte action in which representatives of the APCD will appear before a judge of the Superior Court to seek, upon a showing of evidence, a court order requiring a pollution source to cease its polluting activity. Such an action may be

taken when an immediate but short term cessation of the polluting activity is thought necessary.

The second type of injunction that may be sought is the "preliminary injunction". This type of action is usually taken about five (5) days after the filing of a criminal complaint against a polluter in the Municipal Court, (see part IV). The preliminary injunction is sought to determine whether the pollution from this source should be stopped until the case comes to trial. One important difference between the preliminary injunction and the temporary restraining order is that, in the former, the law requires that the accused be allowed to appear in court to present evidence in his defense.

The final type of injunction is the "permanent injunction". This is the most severe of the three types of injunctions since it requires the permanent cessation of an activity. This characteristic holds particular significance for the industrial community since it may actually put an industry out of business. Because of the severe consequences of such an injunction, a full court trial is required before one may be issued. In many cases the judge may issue such an injunction on a conditional basis, i.e., he may issue the injunction with the provision that it will be revoked upon a showing that the condition in question has been remedied.

There are no standard forms per se used to file for the issuance of an injunction; rather, the District Attorney will draw up an affidavit in which he will include all information pertinent to his case. As a final note, it should be made clear that all or any combination of these injunction forms may be used. For example, the District Attorney may file a

petition for the issuance of a temporary restraining order to stop a company from emitting air contaminants, pending trial on a permanent injunction.

Under the provisions of the State Administrative Mandomus Act (see Appendix A), a person or group may petition the Superior Court, upon the exhaustion of all administrative remedies, for review of certain administrative determinations which affect their activities. These provisions have special applicability to the activities of the Air Pollution Control District with respect to their regulatory powers. For example, if the APCD refused to grant a variance to a company, and the company wished to contest the decision, it would make a formal appeal through the administrative channels as required by the State Health and Safety Code. If the aggrieved party is not satisfied with the decision arrived at through this process, he may appeal to the Superior Court for further review.

SECTION 6. APPEALS PROCEDURE

If a defendant is found guilty in a trial court of violating provisions of the State Health and Safety Code and/or the rules and regulations of the air pollution control district, the defendant has the right to a formal appeal before the Appellate Division of the Superior Court of APEX County. The appellate process is described below in greater detail.

It should be clear that a defendant who is found guilty of a crime has the right to appeal only if he has entered and maintained a plea of innocence. Also, such appeals may only be made on "points of law" and not on findings of fact.

If the defense attorney wishes to appeal the decision of the trial court, he will so indicate at the time the judge pronounces sentence. Following this notification, the defense will ask for a "stay of execution" until the case can be brought before the Superior Court. At this time, the judge may place the defendant in custody, set bail or release the defendant on his own recognizance.

If the appellate court reverses the decision of the Municipal Court, the case is dropped. If the decision of the Municipal Court is upheld, the defendant may file a writ of habeas corpus in order that he may further appeal his case before the District Court of Appeals, the State Supreme Court, etc. It should be noted, however, than any of these higher appeals courts may refuse to hear the case.

SECTION 7. APPENDICES

APPENDIX A.

STATE HEALTH AND SAFETY CODE

Air Pollution Control

Article 1. Creation and Functioning of Districts

24198. The Legislature finds and declares that the people of the State have a primary interest in atmospheric purity and freedom of the air from any air contaminants and that there is pollution of the atmosphere in many portions of the State which is detrimental to the public peace, health, safety, and welfare of the people of the State.

24199. The Legislature hereby finds and declares:

(a) That in portions of the State the air is polluted with smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, particulate matter, and other air contaminants.

(b) That it is not practical or feasible to prevent or reduce such air contaminants by local county and city ordinances.

(c) That in other portions of the State the air is not so polluted.

(d) That it is necessary, therefore, to provide for air pollution control districts in those portions of the State where regulations are necessary and feasible to reduce air contaminants in order to safeguard life, health, property and the public welfare and to make possible the comfortable enjoyment of life and property.

24200. In each county there is hereby created an air pollution control district.

24201. The boundaries of every air pollution control district shall be coextensive with the boundaries of the county within which it is situated.

24202. An air pollution control district shall not transact any business or exercise any of its powers under this chapter until or unless the board of supervisors of the county in which it is situated, by proper resolution, declares at any time hereafter that there is need for an air pollution control district to function in such county.

24203. The board of supervisors at any time on its own motion may hold a public hearing to determine whether or not there is need for an air pollution control district to function.

24204. The board of supervisors shall file notice of the time and place of a public hearing to determine whether or not there is need for an air pollution control district to function by publication once in a newspaper

of general circulation not less than 15 days before, and not more than 45 days before such hearing.

24205. The board of supervisors may adopt a resolution declaring that there is need for an air pollution control district to function if from the evidence received at such a public hearing it finds:

(a) That the air within such county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with the comfortable enjoyment of life or property.

(b) For any reason it is not practical to rely upon the enactment or enforcement of local county and city ordinances to prevent or control the emission of smoke, fumes, or other substances which cause or contribute to such pollution.

Upon the adoption of this resolution the district shall begin to function.

24206. A resolution declaring that there is need for an air pollution control district to function is sufficient if it finds that there is need for an air pollution control district to function, and finds in substantially the wording of Section 24205 that both of the enumerated conditions exist. No further detail is necessary.

24207. A copy of a resolution declaring that there is need for an air pollution control district, duly certified by the county clerk, is admissible in evidence in any suit, action or proceeding.

24208. As used in this chapter, "air contaminant" includes smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof.

24209. The board of supervisors of a county in which an air pollution control district has been authorized to transact business and exercise its powers, may from time to time appropriate funds to such air pollution control district which funds shall be deposited in the treasury of such air pollution control district.

24210. All such appropriations are legal charges against the county.

24211. Every air pollution control district is a body corporate and politic.

24212. Upon the adoption by the board of supervisors of a resolution declaring that there is need for an air pollution control district to function the air pollution control district in that county shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at its pleasure.

(d) To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.

(e) To lease, sell or dispose of any property or any interest therein whenever in the judgment of the air pollution control board such property, or any interest therein, or part thereof, is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of the same for the purposes of the district, and to pay any compensation received therefor into the general fund of the district.

24213. An air pollution control district which is situated in any county included within another air pollution control district created by special law shall cease to function and exercise its powers upon the date of any rules and regulations adopted by the governing body of such special district.

24214. When an air pollution control district ceases to function and exercise its powers pursuant to Section 24213, the property of such district shall vest in the county in which the district is located, and any funds belonging to such district at that time shall be transferred to such county and may be used for general county purposes.

Article 2. Officers

24220. The board of supervisors of a county shall be, and they are hereby designated as, and empowered to act as, ex officio the air pollution control board of the air pollution control district in such county.

24221. All county officers, their assistants, clerks, deputies, and employees, and all other county employees, shall be ex officio officers, assistants, deputies, clerks, and employees, respectively, of the air pollution control district in the county by which they are employed. Except as otherwise provided in this article, they shall perform respectively the same various duties for the air pollution control district as for the county without additional compensation, in order to carry out the provisions of this chapter.

24222. The air pollution control board shall appoint an air pollution control officer.

24223. The air pollution control board may provide for assistants, deputies, clerks, attaches, and other persons to be employed by the air pollution control officer, and the times at which they shall be appointed.

24224. The air pollution control officer shall observe and enforce, within his air pollution control district:

(a) The provisions of this chapter and all provisions of the Vehicle Code relating to the emission or control of air contaminants.

(b) All orders, regulations, and rules prescribed by the air pollution control board of the air pollution control district pursuant to this chapter.

(c) All variances and standards which the hearing board has prescribed pursuant to Article 5 of this chapter.

24225. The air pollution control board may appoint a hearing board, the make-up of which is at the discretion of the air pollution control board.

24226. The air pollution control board shall appoint one member of the hearing board for a term of one year, one for a term of two years, and one for a term of three years. Thereafter the terms of members of the hearing board shall be three years.

24227. The air pollution control board shall determine the compensation of, and pay from district funds, the air pollution control officer, all of his assistants, deputies, clerks, attaches, and other employees, and members of the hearing board.

24227.5 In fixing compensation to be paid to persons subject to the civil services provisions of this article, the air pollution control board, in each instance, shall provide a salary or wage equal to the salary or wage paid to county employees for the same quality of service.

This section shall be operative only in those counties which are operating under freeholders' charters which require that in the fixing of salaries or wages for persons employed by the county subject to the civil service system of such county, the board of supervisors shall, in each instance, provide a salary or wage at least equal to the prevailing salary or wage for the same quality of service rendered to private persons under similar employment in case such prevailing salary or wage can be ascertained.

24228. In any county having a system of civil service, the air pollution control board shall appoint the air pollution control officer, and the air pollution control officer shall appoint all of his assistants, deputies, clerks, attaches, and other employees, pursuant to such civil service provisions, except:

(a) If the Civil Service Commission or body performing the functions thereof, finds that any person has been employed by the county or by any city within the air pollution control district for a continuous period of not less than six months prior to the effective date of a resolution adopted by the board of supervisors pursuant to Article 1 of this chapter, in a position the duties of which, and qualifications for which are substantially the same as, or are greater than and include qualifications which are substantially the same as those of any position in the air pollution control district, and such person has attained permanent civil service status in such city or county position, the Civil Service Commission or such other body shall certify, without examination, such person as eligible to hold such air pollution control district position.

(b) If the Civil Service Commission or body performing the functions thereof finds that any person has been employed by the county or by any city within the air pollution control district in a position the duties of which, and qualifications for which are substantially the same as, or are greater than and include qualifications wich are substantially the same as those of any position in the air pollution control district, at the request of the air pollution control officer, the Civil Service Commission or such other body, may certify, without examination, such person as eligible to hold such air pollution control district position.

(c) Any person entitled to participate in promotional examinations for positions in the county classified civil service shall similarly be entitled to participate in promotional examinations for positions in the classified civil service of the air pollution control district, pursuant to county Civil Service Commission rules in effect at the time, and to be certified for said district positions by the county Civil Service Commission, or other body performing the functions thereof, and to be appointed to said district positions.

(d) This section does not apply to the appointment of members to the hearing board.

24229. All officers and employees of an air pollution control district are entitled to the benefits of the County Employees' Retirement Law of 1937, Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, to the same extent as employees of the county. An air pollution control district is a district as defined in Section 31468 of the Government Code.

24230. If any person is employed by an air pollution control district after certification without examination by the civil service commission or similar body because of his employment in a position of similar duties by the county or by a city within the air pollution control district, for the purpose of retirement benefits and salary rates all time employed in such county or city position shall be considered as time employed by the air pollution control district.

24231. In enforcing the provisions of this chapter, and all provisions of the Vehicle Code relating to the emission and control of air contaminants and the orders, regulations, rules, variances, and standards mentioned in Section 24224, the air pollution control officer of an air pollution control district is a peace officer.

Article 2.5. Claims

24232. All claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.

Article 3. Prohibitions

24241. The provisions of this article do not apply within any air pollution control district unless and until, pursuant to resolution as provided in Article 1 of this chapter, such air pollution control district may function and exercise its powers.

24242. A person shall not discharge into the atmosphere from any single source of emission whatsoever any air contaminant for a period or periods aggregating more than three minutes in any one hour which is:

(a) As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, or

(b) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subsection (a) of this section.

24243. A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.

24244. (Repealed by Stats. 1945, Ch. 1142.)

24245. The provisions of Section 24242 do not apply to smoke from fires:

(a) Set by or permitted by any public officer if such fire is set or permission given in the performance of the official duty of such officer, and such fire in the opinion of such officer is necessary:

(1) For the purpose of the prevention of a fire hazard which cannot be abated by any other means, or

(2) The instruction of public employees in the methods of fighting fire.

(b) Set pursuant to permit on property used for industrial purposes for the purpose of instruction of employees in methods of fighting fire.

24245.1 The governing board of the district may by rule provide for the issuance by the air pollution control officer of permits for open burning. The provisions of Section 24242 do not apply to smoke from fires set pursuant to such permit.

24246. The air pollution control officer, during reasonable hours, for the purpose of enforcing or administering this chapter, or any provisions of the Vehicle Code relating to the emission or control of air contaminants, or of any order, regulation or rule prescribed pursuant thereto, may enter every building, premises, or other place, except a building designed for and used exclusively as a private residence and may stop, detain, and inspect any vehicle, designed for and used on a public highway but which does not run on rails. Every person is guilty of a misdemeanor who in any way denies, obstructs, or hampers such entrance, or such stopping, detaining, or inspection of such vehicle, or who refuses to stop such a vehicle upon the lawful order of the air pollution control officer.

24247. The Legislature does not, by the provisions of this chapter, intend to occupy the field.

The provisions of this chapter do not prohibit the enactment or enforcement by any county or city of any local regulation stricter than the provisions of this article and stricter than the rules and regulations adopted pursuant to Article 4 of this chapter, which local ordinance prohibits, regulates or controls air pollution.

24248. The provisions of this chapter do not supersede any such local county or city regulation, unless such regulations are less restrictive than those set by the State. Appeals can be made through the Air Resources Board.

24249. If it should be held that the provisions of this chapter supersede the provisions of any local county or city ordinance, such suspension shall not bar the prosecution or punishment of any violation of such ordinance which violation was committed when such ordinance was in full force

and effect.

24250. Nothing in this article limits in any way the power of the air pollution control board to make needful orders, rules, and regulations pursuant to Article 4 of this chapter. Nothing in this article permits any action contrary to any such order, rule, or regulation.

24251. The provisions of Section 24242 do not apply to:

(a) Agricultural operations in the growing of crops, or raising of fowls, or animals, or,

(b) The use of an orchard or citrus grove heater which does not produce unconsumed solid carbonaceous matter at a rate in excess of one (1) gram per minute, or,

(c) The use of other equipment in agricultural operations in the growing of crops, or raising of fowls or animals.

24251.1. The provisions of Section 24243 relating to odors do not apply to odors emanating from agricultural operations in the growing of crops or raising of fowls or animals.

24252. Any violation of any provision of this article or of any order, rule, or regulation of the air pollution control board may be enjoined in a civil action brought in the name of the people of the State.

24253. Every person who violates any provision of this article is guilty of a misdemeanor. Every day during any portion of which such violation occurs constitutes a separate offense.

24254. As used in this chapter, "person" also means any state or local governmental agency or public district, or any officer or employee thereof; provided, however, that no state or local governmental agency, or public district, or any officer or employee thereof, shall be criminally liable or responsible under the provisions of this chapter for any acts done by such governmental agency, or public district, in the performance of its functions or by such officers or employees in the performance of their duties. No criminal action shall hereafter be maintained or prosecuted for such acts, and all criminal actions heretofore instituted for such acts shall be dismissed. Any violation of any provision of this chapter or of any order, rule, or regulation of the air pollution control board, by any governmental agency, or public district, or by any officer or employee thereof, may be enjoined in a civil action brought in the name of the people of the State.

Article 4. Rules and Regulations

24260. The air pollution control board of an air pollution control district may make and enforce all needful orders, rules, and regulations necessary or proper to accomplish the purposes of this chapter for the administration of such district, and may perform all other acts necessary or proper to accomplish the purposes of this chapter.

24261. The air pollution control board shall not enact any order, rule or regulation until it first holds a public hearing thereon. It shall give not less than 10 days' notice of the time and place of such public hearing by publication in a newspaper of general circulation published within the district if such a newspaper is published within the district. If no newspaper of general circulation is published within the district it shall give notice of the time and place of public hearing by posting in a public place not less than 10 days before such hearing.

24262. Whenever the air pollution control board finds that the air in the air pollution control district is so polluted as to cause any discomfort or property damage at intervals to a substantial number of inhabitants of the district, the air pollution control board may make and enforce such orders, rules, and regulations as will reduce the amount of air contaminants released within the district.

24263. The air pollution control board may require by regulation that before any person either builds, erects, alters, replaces, operates, sells, rents, or uses any article, machine, equipment, or other contrivance specified by such regulation the use of which may cause the issuance of air contaminants, such person shall obtain a permit to do so from the air pollution control officer.

Insofar as the regulations do not grant an automatic permit for the operation or use of any article, machine, equipment, or contrivance in existence upon the effective date of such regulations, a permit shall not be required without first affording the owner, operator, or user thereof a reasonable time within which to apply for such permit, and to furnish the air pollution control officer the information required pursuant to Section 24269.

24263.7 The air pollution control board by regulation may:

(a) Establish standards of performance for any article, device, equipment, or method specifically designed or intended for installation or use upon or in any motor vehicle as defined in the Vehicle Code, for the purpose of eliminating, reducing or controlling the issuance of air contaminants.

(b) Prohibit the sale, offering for sale of installation of any article, device, equipment or method specifically designed or intended for installation or use upon or in any motor vehicle as defined in the

Vehicle Code to eliminate, reduce, or control the issuance of air contaminants, unless such article, device, equipment or method is of a type which has been submitted to and approved by the air pollution control officer as meeting the minimum standard of performance as authorized in this section. Upon approval the air pollution control officer shall issue a permit authorizing the sale, offering for sale or installation of any said approved article, device, equipment or method referred to in this section.

24264. The air pollution control board may require that before the air pollution control officer issues a permit to build, erect, alter, or replace any equipment, that the plans and specifications show, and that the permit issued by the air pollution control officer require, that such building, erection, alteration, or replacement will be done in such a manner, and that such approved equipment be used as the air pollution control board finds will eliminate or reduce the discharge of any air contaminants.

24265. A permit shall not be required for:

(a) Any vehicle as defined in the Vehicle Code.

(b) Any structure designed for and used exclusively as a dwelling for not more than four families.

(c) An incinerator used exclusively in connection with such a structure.

(d) Barbecue equipment which is not used for commercial purposes.

(e) Equipment described in Section 24251; except that the Air Pollution Control Board of any county, any part of which lies south of the Sixth Standard Parallel South, Mount Diablo Base and Meridian, may at its discretion require operations described in Section 24251 (b) to obtain permits. The board may promulgate such rules and regulations, as herein provided for, but in no event shall a permit be denied an operator, operating orchard or citrus grove heaters, if such heaters produce unconsumed solid carbonaceous matter at the rate of one (1) gram per minute, or less.

(f) Repairs or maintenance not involving structural changes to any equipment for which a permit has been granted.

As used in this section, maintenance does not include operation.

This section does not limit the powers granted to the Air Pollution Control Board by Section 24260 and Section 24262 of this code.

24266. The air pollution control board may contract with the county, and may contract with any city within the air pollution control district, and the county and any such city may contract with the air pollution control district, for the performance of such work in the name of, and subject to

the approval of, the air pollution control officer by the building department or other officer, department, or agency of the county or such city charged with the enforcement of regulations pertaining to the erection, construction, reconstruction, movement, conversion, alteration, or enlargement of buildings or structures, as will accomplish all or part of the purposes of Sections 24263 and 24264. The contract may provide for the consideration, if any, which the air pollution control district shall pay to such city.

24267. The air pollution control board may provide by regulation a schedule of fees not exceeding the estimated cost of issuing such permits and inspection pertaining to such issuance to be paid for the issuance of such permits. Every person applying for a permit shall pay the fee required by such schedule.

24268. A contract entered into pursuance to Section 24266 may provide that fees for permits shall be paid to the city, the officer, department, or agency of which city issues the permit, and may be retained by such city in whole or in part as the consideration, or part thereof, for issuing such permits. Otherwise, all fees paid for the issuance of permits shall be paid into the district treasury.

24269. The air pollution control officer at any time may require from an applicant for, or holder of any permit provided for by the regulations of the air pollution control board, such information, analyses, plans, or specifications as will disclose the nature, extent, quantity, or degree of air contaminants which are or may be discharged by such source.

24270. If the holder of any permit provided for by the regulations of the air pollution control board within a reasonable time wilfully fails and refuses to furnish to the air pollution control officer information, analyses, plans, or specifications requested by such air pollution control officer, the air pollution control officer may suspend the permit. He shall serve notice in writing of such suspension and the reasons therefor on the permittee.

24271. Within 10 days after receipt of notice of suspension the permittee may file with the hearing board a demand for a public hearing as to whether or not the permit was properly suspended.

24272. The air pollution control officer shall reinstate a suspended permit when all information, analyses, plans, and specifications are furnished.

24273. The air pollution control officer may reinstate a suspended permit where, in his opinion, good reasons exist therefor.

24274. The air pollution control officer may request the hearing board to hold a public hearing to determine whether a permit should be revoked, or a suspended permit should be reinstated.

24275. Within 30 days after either the air pollution control officer or the permittee has requested a public hearing, the hearing board shall hold such a hearing and give notice of the time and place of such hearing to the permittee, to the air pollution control officer and to such other persons as the hearing board deems should be notified, not less than 10 days before the date of the public hearing.

24276. After a public hearing, the hearing board may:

(a) Continue the suspension of a permit suspended by the air pollution control officer, or

(b) Remove the suspension of an existing permit invoked by the air pollution control officer pending the furnishing by the permittee of the information, analyses, plans, and specifications required, or

(c) Find that no violation exists and reinstate an existing permit, or

(d) Revoke an existing permit, if it finds:

(1) The permittee has failed to correct any conditions required by the air pollution control officer, or

(2) A refusal of a permit would be justified, or

(3) Fraud or deceit was employed in the obtaining of the permit, or

(4) Any violation of this chapter or of any rule or regulation of the air pollution control board.

24277. Every person is guilty of a misdemeanor who knowingly makes any false statement in any application for permit or in any information, analyses, plans, or specifications submitted either in conjunction therewith, or at the request of the air pollution control officer.

24278. Every person is guilty of a misdemeanor who builds, erects, alters, replaces, uses, or operates any source capable of emitting air contaminants for which a permit is required by the regulations of the air pollutions control district when his permit so to do has been either suspended or revoked.

24279. Every person required by the regulations of the air pollution control board to obtain a permit so to do who, without first obtaining such permit, builds, erects, alters, replaces, uses, or operates any source capable of emitting air contaminants, is guilty of a misdemeanor.

24280. Every person is guilty of a misdemeanor who builds, erects, alters, or replaces, operates or uses any such article, machine, equipment, or other contrivance contrary to the provisions of any permits issued under

regulations adopted pursuant to this article.

24281. Every person violating any order, rule, or regulation of an air pollution control district is guilty of a misdemeanor. Every day during any portion of which such a violation occurs is a separate offense.

24282. Every permittee who wilfully fails or neglects to furnish information, analyses, plans, or specifications required by the air pollution control officer is guilty of a misdemeanor.

Article 5. Variances

24291. The provisions of this chapter do not prohibit the discharge of air contaminants to a greater extent or for a longer time, or both, than permitted by Article 3 of this chapter or by rules, regulations, or orders of the air pollution control board, if not of a greater extent or longer time than the hearing board or a court after a hearing before the hearing board finds necessary pursuant to the provisions of this article.

24292. The hearing board on its own motion or at the request of any person may hold a hearing to determine under what conditions and to what extent a variance from the requirements established by Article 3 of this chapter or by rules, regulations, or orders of the air pollution control board is necessary and will be permitted.

24293. The air pollution control board may provide, by regulation, a schedule of fees which will yield a sum not exceeding the estimated cost of the administration of this article, for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by such regulations.

24294. All such fees shall be paid into the district treasury.

24295. The hearing board shall serve a notice of the time and place of a hearing to grant a variance upon the air pollution control officer and upon the applicant, if any, not less than 10 days prior to such hearing.

24296. If the hearing board finds that because of conditions beyond control compliance with Article 3 of this chapter or with any rule, regulation, or order of the air pollution control board will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without a sufficient corresponding benefit or advantage to the people in the reduction of air contamination, it shall prescribe other and different requirements not more onerous applicable to plants and equipment operated either by named classes of industries or persons, or to the operation of separate persons; provided, however, that no variance may permit or authorize the maintenance of a nuisance.

24297. In determining under what conditions and to what extent a variance from said requirements is necessary and will be permitted, the hearing board shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the district and to any lawful business, occupation or activity involved, resulting from requiring compliance with said requirements or resulting from granting a variance.

24298. The hearing board may revoke or modify by written order, after a public hearing held upon not less than 10 days' notice, any order permitting a variance.

24299. The hearing board shall serve notice of the time and place of a hearing to revoke or modify any order permitting a variance not less than 10 days prior to such hearing upon the air pollution control officer, upon all persons who will be subjected to greater restrictions if such order is revoked or modified as proposed and upon all other persons interested or likely to be affected who have filed with the hearing board of air pollution control officer a written request for such notification.

24300. The hearing board shall serve a notice of the time and place of a hearing to grant a variance or to revoke or modify an order permitting a variance either by personal service or by first class mail, postage prepaid, as provided by Section 15. If either the identity or address of any person entitled to notice is unknown, the hearing board shall serve such person by publication of notice once in a newspaper of general circulation published within the air pollution control district if such newspaper is published therein, otherwise by posting at a public place at the county seat within the district.

24301. The hearing board in making any order permitting a variance may specify the time during which such order will be effective, in no event to exceed one year, but such variance may be continued from year to year without another hearing on the approval of the air pollution control officer.

24302. If any local county or city ordinance has provided regulations similar to those in Article 3 of this chapter or to any order, regulation, or rule prescribed by the air pollution control board, and has provided for the granting of variances, and pursuant to such local ordinance a variance has been granted prior to the adoption of a resolution by the board of supervisors pursuant to Article 1 of this chapter, such variance shall be continued as a variance of the hearing board for the time specified therein or one year whichever is shorter or until and unless prior to the expiration of such time the hearing board modifies or revokes such variance as provided in this article.

Article 6. Procedure

24310. This article applies to all hearings which either Article 4 or Article 5 of this chapter provides shall be held by any administrative

body so named by the air pollution control board.

24311. The hearing board shall select from its number a chairman.

24312. The hearing board may hold a hearing in bank or may designate two or one of their number to hold a hearing.

24313. If two or three members of the hearing board conduct a hearing the concurrence of two shall be necessary to a decision.

24314. The hearing board not less than two being present may, in its discretion, within 30 days rehear any matter which was decided by a single member.

24315. Whenever the members of the hearing board conducting any hearing deem it necessary to examine any person as a witness at such hearing, the chairman of the hearing board shall issue a subpoena, in proper form, commanding such person to appear before it at a time and place specified to be examined as a witness. The subpoena may require such person to produce all books, papers, and documents in his possession or under his control material to such hearing.

24316. A subpoena to appear before the hearing board shall be served in the same manner as a subpoena in a civil action.

24317. Whenever any person duly subpoenaed to appear and give evidence or to produce any books and papers before the hearing board neglects or refuses to appear, or to produce any books and papers, as required by the subpoena, or refuses to testify or to answer any question which the hearing board decides is proper and pertinent, he shall be deemed in contempt, and the hearing board shall report the fact to the judge of the superior court of the county.

24318. Upon receipt of the report, the judge of the superior court shall issue an attachment directed to the sheriff of the county where the witness was required to appear and testify, commanding the sheriff to attach such person and forthwith bring him before the judge who ordered the attachment issued.

24319. On the return of the attachment and the production of the body of the defendant, the judge has jurisdiction of the matter. The person charged may purge himself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

24320. Every member of the hearing board may administer oaths in every hearing in which he participates.

24321. At any hearing the hearing board may require all of any witnesses to be sworn before testifying.

24322. Any person deeming himself aggrieved, including the air pollution control district, may maintain a special proceeding in the superior court, to determine the reasonableness and legality of any action of the hearing board.

24323. Any person filing such a special proceeding after any decision of the hearing board shall be entitled to a trial de novo and an independent determination of the reasonableness and legality of such action in such court on all issues of law, facts, and mixed questions of law and facts and opinions therein involved.

Article 7. Unified Air Pollution Control Districts

24330. Two or more contiguous counties having activated air pollution control districts under this chapter may merge their several districts into one district, under the provisions of this article.

24331. The board of supervisors of each county may by a vote of its members appoint two of its members to meet with an equal number appointed in a like manner from the other counties and agree to form one district, which agreement, upon ratification by the several boards of supervisors, shall create one district out of the several districts. Such agreement shall provide for the voting procedure on the air pollution control board.

24332. The boundaries of the unified air pollution control district shall be the same as the boundaries of the several counties of which it is comprised.

24333. Each county within the unified district shall be a zone of that district.

24334. The powers of the district shall be as provided in this chapter unless provided otherwise by this article.

24335. The boards of supervisors of the several zones comprising the unified district shall be, ex officio, the air pollution control board of the district.

24336. All county officers, their assistants, clerks, deputies, and employees of the several counties in the district and all other county employees of the zones within the district shall be ex officio officers, assistants, deputies, clerks, and employees of the district only within the zone in which they are employed.

24337. The boards of supervisors of each zone in the district shall appropriate such funds as are necessary to carry out the purposes of such air pollution control districts, as determined by the air pollution

control board, in the proportion that the population of said zone at the date of merger bears to the total population of the district at the date of merger.

24338. All such appropriations are legal charges against the county in which the board of supervisors voted the appropriation.

24339. The treasurers of the several counties within the district shall pay the amount appropriated by the board of supervisors of their county into the treasury of the district.

24340. The district treasury shall be in the custody of the county treasurer of the largest zone, in terms of population at the date of merger, in the district and said treasurer shall be the unified air pollution control district treasurer.

24341. Whenever any person duly subpoenaed to appear and give evidence or to produce any books and papers before the hearing board neglects or refuses to appear, or to produce any books and papers, as required by the subpoena, or refuses to testify or to answer any question which the hearing board decides is proper and pertinent, he shall be deemed in contempt, and the hearing board shall report the fact to the judge of the superior court of the county in which the person resides.

Article 8. Air Sanitation

425. The State Department of Public Health shall maintain a program of air sanitation, including, but not limited to:

(a) The conduct of studies to determine the health effects of air pollution;

(b) The determination of the physiological effects of air pollution upon plant and animal life;

(c) The determination of factors responsible for air pollution;

(d) The monitoring of air pollutants;

(e) The development of administrative means of control of air pollution in emergencies;

(f) Assistance to local agencies in affectuating all of the subdivisions of this section.

426. The department may enter into agreements with any public or private organization, agency, or individual to carry out its duties and responsibilities with respect to air sanitation.

426.1. The State Department of Public Health shall through state research and recommendations from local control districts, develop and publish standards for the quality of the air of this State. The standards shall be so developed as to reflect the relationship between the intensity and composition of air pollution and the health, illness, including irritation to the senses, and death of human beings, as well as damage to vegetation and interference with visibility.

The standards shall be developed after the department has held public hearings and afforded an opportunity for all interested persons to appear and file statements or be heard. The department shall publish such notice of the hearings as it determines to be reasonably necessary.

The department, after notice and hearing, may revise the standards, and shall publish the revised standards, from time to time.

426.5. It shall be the duty of the State Director of Public Health to determine the maximum allowable standards of emissions of exhaust contaminants from motor vehicles which are compatible with the preservation of the public health including the prevention of irritation to the senses, interference with visibility and damage to vegetation.

The standards shall be developed after the department has held public hearings and afforded an opportunity for all interested persons to appear and file statements or be heard. The department shall publish such notice of the hearings as it determines to be reasonably necessary.

The department after notice and hearing may revise the standards, and shall publish the revised standards, from time to time. In revising the standards the department shall, after February 1, 1960, take into account all emissions from motor vehicles rather than exhaust emissions only.

APPENDIX B-1

AIR POLLUTION CONTROL DISTRICT - COUNTY OF LOS ANGELES
434 South San Pedro Street, Los Angeles, California 90013
Tel. 629-4711, ext. 66071

REQUEST FOR COMPLAINT

TO:

DATE OF VIOLATION_____
APCD NUMBER_____
NOTICE NUMBER_____

NAME(s)_____ ADDRESS(es)_____

PLACE OF VIOLATION_____

CHARGE: VIOLATION OF SEC(s)_____

SOURCE_____ POINT OF OBSERVATION_____

WEATHER_____ WIND_____ PHYSICAL EVIDENCE (LIST)_____

PHOTOGRAPHS_____

DRIVER'S DESCRIPTION	SEX	HEIGHT	WEIGHT	DATE OF BIRTH	COLOR OF EYES	COLOR OF HAIR

VISIBLE EMISSIONS OBSERVED

START	STOP	MIN.	R.NO. % OP.	COLOR

TOTAL MIN.

WITNESSES:

INSPECTOR'S REPORT

APPROVED_____ RECOMMENDED_____

16-40D70

APPENDIX B-2

DISPOSITION OF COMPLAINT

DATE FILED _____ 19____ CASE NUMBER _____

COURT _____

DATE OF ARRAIGNMENT _____ DIVISION _____

NAME OF JUDGE _____ PLEA _____

CONTINUED TO _____ 19____ REASON _____

SET FOR TRIAL _____

TRIAL

COURT _____ JURY _____ S.O.R. _____ C.O.P. _____

CONTINUED TO _____ REASON _____

NAME OF JUDGE _____ DIVISION _____

PROSECUTOR _____

DISPOSITION

CONVICTED _____ ACQUITTED _____ DISMISSED _____ OTHER _____

FINE PAID $ _____ FINE SUSPENDED $ _____

JAIL SENTENCE _____ DAYS SUSPENDED _____ DAYS

TERMS OF PROBATION _____

REMARKS: (INCLUDE STATEMENT ON ALL ACQUITTALS) _____

COMPLETED _____

SIGNATURE

16-40D70

APPENDIX B-3

IN THE MUNICIPAL COURT OF JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. Defendant.	M.C. No. D.A. No. **COMPLAINT – Misdemeanor**

The undersigned declarant and complainant states that he is informed and believes and upon such information and belief declares that based upon the Declaration filed herewith which is incorporated by reference as if fully set forth herein: on or about , at and in the above-entitled Judicial District, in the County of Los Angeles, State of California, a misdemeanor, to wit,

was committed by

who did unlawfully

Said declarant and complainant therefore prays that based upon the Complaint and Declaration a warrant may be issued for the arrest of said defendant who may then be dealt with according to law.

Executed on in the County of Los Angeles, State of California.

I declare under penalty of perjury that the foregoing is true and correct.

.....
Declarant and Complainant

INVESTIGATING AGENCY: AIR POLLUTION CONTROL DISTRICT

WITNESSES

APPENDIX B-4
COUNT

For a further and separate cause of complaint, being a different offense of the same class of crimes and offenses as the charge set forth herein, declarant and complainant further states that he is informed and believes and upon such information and belief declares that based upon the Declaration filed herewith which is incorporated by reference as if fully set forth herein on or about the day of , at and in the said Judicial District, County of Los Angeles, State of California, a misdemeanor, to wit,

was committed by

who at the time and place last aforesaid did unlawfully

Said declarant and complainant therefore prays that based upon the Complaint and Declaration a warrant may be issued for the arrest of said defendant who may then be dealt with according to law.

Executed on in the County of Los Angeles, State of California.

I declare under penalty of perjury that the foregoing is true and correct.

.....
Declarant and Complainant

INVESTIGATING AGENCY: AIR POLLUTION CONTROL DISTRICT

WITNESSES

IN THE MUNICIPAL COURT OF_____JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff

vs.

a Corporation, Defendant

Case No._____

SUMMONS
ON
CRIMINAL COMPLAINT

THE PEOPLE OF THE STATE OF CALIFORNIA,

To the_____

_____

a corporation, at_____
(address)

YOU ARE HEREBY SUMMONED to appear* in the above-named court at_____

_____
(address of court)

in Division_____, Room_____, on_____, _____M.,

to answer the charge(s) made against you upon the complaint of_____

_____

for a misdemeanor, to wit: violation of_____

_____

Dated: At_____in said County of Los Angeles, this_____

day of_____19____.

_____
Judge of the Municipal Court

_____Judicial District

I hereby certify that I served the SUMMONS upon the defendant corporation named herein, by showing the original and delivering a true copy thereof to

_____the_____of said
(name of person served) (title of person served)

Defendant corporation, on the_____day of_____, 19____, at

and in the City of_____, County of Los Angeles, State of California

_____
Air Pollution Control Inspector

SERVICE — The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation or to the secretary, cashier, or managing agent thereof. (Sec. 1392 PC)

*NOTE: A CORPORATION MUST APPEAR IN COURT BY AN ATTORNEY AT LAW, NOT BY AN OFFICER OR AGENT OF SAID CORPORATION.

In the Municipal Court of Los Angeles Judicial District

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, No. ..... Div. 20

To .....

.....

.....

.....

.....

.....

.....

You are hereby commanded to appear in the **Municipal** Court of Los Angeles Judicial District, in Division 20 thereof, at Room 723 County Court House, 110 No. Grand, in said City, in the County of Los Angeles, on ....., at ..... o'clock .....M., as a witness in the criminal action prosecuted by the People of the State of California against .....

.....

on the part of the People, and a disobedience will be punished as Contempt of Court.

Witness the Honorable Presiding Judge of the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, attested by my hand and the seal of said Court.

Dated .....

GEORGE J. BARBOUR,
Clerk of said Court.

By.....Deputy.

I HEREBY CERTIFY that I served the within Subpoena, by showing the within original to the within named:

..... on ..... day of ....., 19.....

..... on ..... day of ....., 19.....

..... on ..... day of ....., 19.....

..... on ..... day of ....., 19.....

..... on ..... day of ....., 19.....

personally, and by showing ..... the original and informing ..... of the contents thereof at the City of Los Angeles, County of Los Angeles, State of California.

.....
Police Officer of Los Angeles City.

MUNICIPAL COURT
OF LOS ANGELES JUDICIAL DISTRICT
County of Los Angeles, State of California

SUBPOENA

Filed ....., 19.....
GEORGE J. BARBOUR, Clerk

By ....., Deputy.

I HEREBY CERTIFY, that after diligent search and due inquiry, I am unable to find the within named .....
.....
.....
.....
....., or either of them, within the City of Los Angeles.

Dated....., 19.....

.....
Police Officer of Los Angeles City.

APPENDIX B-8

LOS ANGELES COUNTY

AIR POLLUTION CONTROL DISTRICT

434 South San Pedro Street, Los Angeles, California 90013

ROBERT L. CLASS
Air Pollution Control Officer

Dear

This is to inform you that a misdemeanor complaint has been filed in the

naming you

as a defendant regarding a violation of

In order to avoid the issuance of a warrant, it is suggested that you be present in the above court on
which is the time set for the arraignment in the above matter.

Should you have any questions in regard to this matter, please address your inquiries to the Clerk of the Court at the above Court address. In writing please refer to the case number indicated above.

Very truly yours,

Ralph E. George
Director of Enforcement

Walter E. Olson
Head A.P. Engineering Inspector

WEO:
cc:

APPENDIX B-9

Name, Address and Telephone No. of Attorney(s)

Space Below for Use of Court Clerk Only

Attorney(s) for

DECLARATION FOR SUBPENA DUCES TECUM

IN THE

MUNICIPAL COURT

OF LOS ANGELES JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Case Number

..... vs. .....

Plaintiff(s) Defendant(s)

I, the undersigned, say:

I am ..... in the above-entitled action;

that said action has been set for .....

on ..... at ..... M., in Division .....

..... of the above-named court; that .....

.....

has in his possession or under his control the following: (Designate and name the exact thing(s) to be produced)

Affiant believes and so states that good cause exists for the production of the above described matters and things and that the above are material to the proper presentation of his case by reason of the following facts:

(State the materiality to the issues involved)

Executed on ..... (date) at ..... (place), California.

I declare under penalty of perjury that the foregoing is true and correct.

.....
(Signature of Declarant)

APPENDIX B-10

Name, Address and Telephone No. of Attorney(s) | Space Below for Use of Court Clerk Only

Attorney(s) for .....

MUNICIPAL COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
(SUPERIOR, MUNICIPAL, or JUSTICE)

LOS ANGELES JUDICIAL DISTRICT
(When applicable, insert name of Municipal or Justice Court District or of branch court)

Plaintiff(s) vs.

Defendant(s)
(Abbreviated Title)

CASE NUMBER

SUBPENA DUCES TECUM
(Civil)

THE PEOPLE OF THE STATE OF CALIFORNIA, to _____:

You are ordered to appear in this court, located at _____,
(Street Address of Court and City)

on _____ (Date) at _____ (Time) .m., _____ (Department, Division or Room No., if any), to testify as a witness in this action.

You must appear at that time unless you make a special agreement to appear at another time, etc., with:

_____ at _____.
(Name of Attorney or Party Requesting This Subpena Duces Tecum) (Telephone Number)

You are also ordered to bring with you the books, papers and documents or other things in your possession or under your control, described in the attached declaration or affidavit as follows: (Type or Print)

Disobedience of this subpena may be punished as contempt by this court. You will also be liable for the sum of one hundred dollars and all damages to such party resulting from your failure to attend or to bring the books, etc., described above.

(To be completed when subpena is directed to a California highway patrolman, sheriff, marshal or policeman, etc.)

This subpena is directed to a member of _____
(Name of Employing Agency)

I certify that the fees required by law are deposited with this court:

Receipt No.: _____ Amount Deposited $_____

Dated _____ GEORGE J. BARBOUR, Clerk

(SEAL) By _____, Deputy

Note: The original declaration or affidavit must be filed with the court clerk and a copy served with this subpena duces tecum.

(See reverse side for Proof of Service)

Form Approved by the Judicial Council of California Effective Nov. 10, 1969

SUBPENA DUCES TECUM (Civil)

C.C.P. §§ 1985-1997; Evid. C. §§ 1560-1566; Gov. C. §§ 68097.1-68097.4; etc.

76S809—Ci 150—(9-70)—Cdb 10 70

APPENDIX B-12

IN THE MUNICIPAL COURT OF _____ JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
Defendant(s).

No._____

DECLARATION IN SUPPORT OF ARREST WARRANT MADE UNDER SECTION 2015.5 CCP.

The undersigned hereby declares, upon information and belief;

That he is currently employed as an _____ for the _____ of _____, California, and has been so employed throughout this investigation.

That pursuant to his employment, he has been assigned to investigate allegations that _____

_____

did violate _____

_____.

That pursuant to this assignment, your affiant has contacted witnesses, obtained their statements, and received written reports and statements prepared by others known by your affiant to be law enforcement officers, all of which are included in a report consisting of _____ pages, which is attached hereto as Exhibit 1 and incorporated by reference as fully set forth.

I declare under penalty of perjury that the foregoing facts and attached reports are true and correct.

Executed at Los Angeles, California, on _____.

_____

APPENDIX B-11

PROOF OF SERVICE OF SUBPENA DUCES TECUM AND OF DECLARATION/AFFIDAVIT

(C.C.P. §§ 410.1, 1987, 1987.5, 1988, 1989, 2015.5; Gov. C. §§ 26721, 26743, 26746, 68093, 68096, 72230, etc.)

I served this subpena duces tecum by delivering a copy thereof, together with a copy of the declaration/affidavit in support of such subpena duces tecum, to each of the following persons personally and I offered and, upon demand, paid to each of them the fees required by law:

Name of Person Served	Street Address and City Where Served	Date and Time of Service	Fees Demanded? (Yes/No)	Fees Paid (If Any)
_____	_____	_____:_____	_____	$_____
_____	_____	_____:_____	_____	$_____
_____	_____	_____:_____	_____	$_____
_____	_____	_____:_____	_____	$_____

Fee for service $_____, Mileage $_____, Notary $_____, Total $_____.

(To be completed by server other than a sheriff, marshal or constable)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, (Date)

at _____, California. (Place)

_____ (Signature of Declarant)

_____ (Type or Print Name of Declarant)

_____ (Type or Print Address)

_____

(To be completed by sheriff, marshal or constable)

I certify that I received this subpena duces tecum on _____ (Date) and that the foregoing is true and correct.

Dated _____

_____ (Type or Print Name of Officer)

_____ (Type or Print Title of Officer)

Of _____, (Court or Judicial District*)

_____ County, California

_____ (Signature of Officer or Deputy)

* Fill in if service made by marshal or constable.

APPENDIX B-13

Name, Address and Telephone No. of Attorney(s)	Space Below for Use of Court Clerk Only
Attorney(s) for	

NOTICE OF APPEAL	IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT COUNTY OF LOS ANGELES, STATE OF CALIFORNIA	Municipal Court Number Superior Court Number CIV. A -

..... vs. .....
Plaintiff(s) Defendant(s)

.....

.....

in the above-entitled action hereby appeal(s) to the Appellate Department of the Superior Court in and for the County of Los Angeles, State of California, from the .....
(judgment and/or order)

.....

entered in the above-named municipal court on .....

in favor of .....

.....

.....

Dated .....

.....

.....

.....

Attorney(s) for .....

.....

76N592—C1 136—1/64

NOTICE OF APPEAL

C.C.P. 933

APPENDIX C-1

C. APPELATE COURT DECISIONS

People vs. International Steel Corporation

- Upholds constitutionality of Section 24242(a) Health and Safety Code.
- Upholds use of Ringelmann Chart to describe prohibited act.
- Upholds inspectors training to justify their competency to testify as experts.

People vs. Frank L. Alexander

- Reaffirms constitutionality of Section 24242(a) Health and Safety Code.
- Stated: "It is the act itself and not the guilty intent that determines the guilt".
- Restates sentence imposed being left to discretion of trial court.

People vs. V. W. Plumb

People vs. Inland Petroleum Company

- Holds employers responsible for criminal acts of their employees in the course of their employment, even though employers may be ignorant of employees criminal acts.

APPENDIX C-2

PEOPLE v. INTERNATIONAL STEEL CORP., et al. CR A 2654
January 25, 1951

Affirmed and reversed.

Appeals by defendants from judgments of the Justice's Court of Compton Township, Ralph C. Dills, Judge.

All pertinent facts of this case are contained in the opinion.

O P I N I O N
(Prepared by Court)

The defendants, a corporation and two natural persons, were convicted on charges of violating Section 24242 of the Health and Safety Code, which is a part of the law for the formation of air pollution control district, enacted in 1947 (Stats. 1947, Chap. 632, pp. 1640-1651) as an addition to the Health and Safety Code, for the purpose of reducing air contamination, popularly known as "smog". Defendants appeal from the judgments, and in support of the appeals contend that the prohibitory provisions of this law are unconstitutional and void for various reasons, that the evidence does not support the findings of guilt, and that the court erred in rulings on evidence. We have concluded that the control of "smog" is a proper subject of the police power, that the prohibitions of the statute herein mentioned violate none of the constitutional provisions referred to, that the evidence supports the finding of guilt, except as to the secretary of the corporation, defendant Olmstead, that no errors in ruling on evidence appear, and the judgments must be affirmed except as to Olmstead.

The general purpose of the law above mentioned, as appears from Sections 24198 and 24199 of the Health and Safety Code, is to reduce air contamination where it exists, "in order to safeguard life, health, property and the public welfare and to make possible the comfortable enjoyment of life and property." Section 24253 makes it a misdemeanor to violate any part of the article which contains Section 24242 and the latter section provides that: "A person shall not discharge into the atmosphere from any single source of emission whatsoever any air contaminant for a period or periods aggregating more than three minutes in any one hour which is: (a) As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, or (b) Of such opacity as to obscure any observer's view to a degree equal to or greater than does smoke described in subsection (a) of this section."

This provision is attacked on the ground that it sets forth no ascertainable standard of guilt and is fatally uncertain, by reason of its reference to the Ringelmann Chart for the description of the forbidden air contaminant. The complaint here specified smoke as the air contaminant

discharged, so we limit our further discussion to smoke.

The term "air contaminant" is defined by Section 24208 to include smoke and a variety of other specified emanations. All that is needed further for certainty in Section 24242, at it applies here, is some means of determining the density or opacity of smoke that is forbidden. "That is certain which can be made certain". (Civil Code, Sec. 3538). This rule is as applicable to statutes as to other expressions of ideas. A statute may refer to and adopt, for an expression of the legislative intent, a statute, or rules or regulations of another state or of the United States (In re Burke (1923) 190 Cal. 326, 328: Brock v. Superior Court (1937), 9 Cal. 2d 291, 297; In re Kinney (1921), 53 Cal. App. 792, 794; Greene v. Lakeport (1925), 74 Cal. App. 1, 9.) In Arwine v. Board of Medical Examiners (1907), 151 Cal. 499, 503, and Ex parte Gerino (1904), 143 Cal. 412, 419, the court upheld a provision of statute adopting as the standard of efficiency to which medical schools should conform the standard prescribed by an association of such schools - even an after adopted standard.

We think it is equally permissible for a statute to refer to and adopt, for description of a prohibited act, an official publication of any United States board or bureau established by law, such as the United States Bureau of Mines. The publications of that bureau are as readily available for examination by those seeking information on the effect of the statute as were the statutes and regulations, references to which were approved in the cases just cited. It is no more necessary here than it was in those cases that provision be made for free or other public distribution of the matter referred to. The courts take judicial notice of the official acts of the Bureau of Mines (Code of Civil Procedure, Sec. 1875, subd. 3; see also Livermore v. Beal (1937), 18 Cal. App. 2d 535, 540-542; Williams v. S. F. (1938), 24 Cal. App. 2d 630, 633; Arnold v. Universal Oil Land Co. (1941), 45 Cal. App. 2d 522, 529), and private citizens who are concerned with them are also charged with notice of them. (Arnold v. Universal Oil Land Co., supra, at p. 530.)

While, as already stated, the courts take notice of the Ringelmann Chart, our notice in this case is fortified by a copy which was introduced in evidence and is in the record. It is a plain white piece of paper divided into four sections, numbered from 1 to 4 and each about 5-3/4 x 8-3/4 inches in size. On each of these sections is printed a series of intersecting heavy black lines of uniform width for each section, with the lines growing progressively wider from section 1 to section 4, until in section 4 the black covers much more than half of the surface. This chart refers to Bureau of Mines Information Circular No. 6888, a copy of which is also in the record. From the chart and this circular, it appears that the chart is to be posted at a distance of 50 feet from the observer. When so posted the black lines and the white spaces merge into each other, by a process of optical illusion, so as to present the appearance of a series of gray rectangles of different color densities, No. 4 being the

densest. Estimates of the density of smoke may be made by glancing from this chart so displayed to smoke, and picking out the section on the chart which most nearly resembles the smoke. This mode of measuring the density of smoke has been in use, it appears, for over fifty years. This affords a reasonably certain mode of determining and stating the density and opacity

of smoke, and we think that the statute adopting it is not lacking in certainty.

It is also urged that the statute is unreasonable and discriminatory because under it one who discharges an air contaminant only slightly below the prescribed limit of color or opacity is exempt from the prohibition even though if he continues his operation long enough he will discharge more contaminant into the air than one who continues from only a short time beyond the three-minute minimum. This is only another way of saying that the line between permission and prohibition is drawn in the wrong place or that no such line can be drawn. But the drawing of such a line is very largely a matter of legislative descretion, the exercise of which will not be reversed by the courts unless abused. As the court said, upholding a statute against a similar attack, in Ferrante v. Fish & Game Comm. (1946), 29 Cal. 2d 365, 374, "the line must be drawn somewhere or there can be no classification and the courts have recognized that if the classification if reasonable in its over-all operation it is not to be stricken down because of its application to a particular case that may lie just inside its borders." Upholding a city ordinance establishing a district in which undertaking establishments were permitted and prohibiting them elsewhere, the court said, in Brown v. City of Los Angeles (1920), 183 Cal. 783, 789: "The mere fact that outside of the permissive district there was other property similar in nature and character would not justify the court upon ascertaining that fact to substitute its judgment for the legislative judgment. The boundary line of a district must always be more or less arbitrary for the property on one side of the line cannot, in the nature of things, be very different from that immediately on the other side of that line." (See also In re Herrera (1943), 23 Cal. 2d 206, 213.) The principles declared in these cases are applicable here and impel us to uphold the statute against this objection.

Further objection to the statute is based on Section 24251, Health and Safety Code, which provides that Section 24242 does not apply to certain agricultural operations or the use of orchard heaters not producing more than a specified amount of smoke. It is contended that this provision prevents the law from having a uniform operation, makes it a special law and constitutes an arbitrary discrimination, in violation of several constitutional provisions referred to. The decisions on these and cognate questions are well nigh innumerable, and we do not find it necessary to review them here. We have, however, considered these cited by defendants,

and others, and conclude that the statue is not vulnerable to this attack. The effect of Section 24251 is that the prohibitions of Section 24242 do not extend to the described agricultural operations, or the specified orchard heating. But the legislature may make a reasonable classification, founded upon some natural, constitutional or intrinsic distinction (Lelande v. Lowery (1945), 26 Cal. 2d 224, 232; People v. Western Fruit Growers (1943) 22 Cal. 2d 494, 506; In re Herrera, supra, (1943), 23 Cal.

2d 206, 212; Takahashi v. Fish & Game Comm. (1947), 30 Cal. 2d 719, 727.) The legislature is not bound, in order to make its action valid, to extend its regulation to all cases which it might possibly reach, but may confine its restrictions to those classes of cases where the need is deemed to be clearest. (Lelande v. Lowery, supra; Powers Farms v. Con-Solidated Irrig. Dist. (1941), 19 Cal. 2d 123, 131; In re Girard (1921), 186 Cal. 718, 723.) There is a strong presumption in favor of the validity of a legislative classification. (County of L. A. v. Southern Cal. Tel. Co. (1948), 32 Cal. 2d 378, 389, 932; Takahashi v. Fish and Game Comm., supra, at pp. 727-728; In re Herrera, supra.) "When a legislative classification is questioned, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of existence of that state of facts, and the burden of showing arbitrary action rests upon the one who assails the classification." (People v. Western Fruit Growers, supra, at p. 507; to same effect, Leland v. Lowery, supra.)

Agricultural operations are usually carried on in rural district, where there is not such a concentration of many establishments in small areas as is often found in urban or suburban areas, and do not usually result in excessive production of smoke. Orchard heating in California is done for only a few days in the course of a year. The legislature may have regarded these facts of common knowledge as affording a reasonable basis for the exclusions made in Section 24251. It may also have investigated and discovered other facts, not negatived by anything before us, tending to show the comparative harmlessness of the operations excluded and the difficulty which agricultural operators would have in minimizing such harm as their operations bring about. In view of the presumption in favor of the validity of its action, as declared in the cases above cited, we are not justified in upsetting its decision.

Three witnesses testified regarding the smoke discharged from defendants' place of business on the occasions specified in the complaint, and its degree of density and opacity as compared with the Ringelmann Chart. Defendants complain that these witnesses showed no qualifications sufficient to enable them to give expert testimony on this subject, and that their observations were not sufficient because they had no Ringelmann Charts with them when those observations were made. Assuming that the comparative density and opacity of the smoke is a matter for expert

testimony only, we see no error in the rulings of the court admitting in evidence and refusing to strike the testimony of these witnesses. The Air Pollution Control District established under the statute in Los Angeles County maintained a school where its inspectors were trained to "read smoke," as they called it, by the aid of the Ringelmann Chart, and after they became experienced they no longer needed to look at the chart. The witnesses just mentioned attending this school before making the observations to which they testified, and by that and other experience acquired the ability to estimate the opacity and color of smoke such as they testified to with reference to the Ringelmann Chart without actually using the chart. Their testimony was sufficient in these respects to justify the ruling of the court that they were competent to testify as experts. (See Hutter v. Hommel (1931), 213 Cal. 677, 681; Darling v. Pacific Elec. Ry. (1925), 197 Cal. 702, 714.) If there was any doubt as to the adequacy of their training, it was not enough to require the exclusion of their testimony, but would go only to its weight and credibility, which are not matters for consideration here. (See Cloud v. Market St. Ry. Co. (1946), 74 Cal. App. 2d 92, 100.)

As to defendant Hochman and the defendant corporation, we are satisified that the evidence is sufficient to support the convictions. We come to a different conclusion regarding defendant Olmstead. The place where the smoke was discharged was operated by the defendant corporation and the smoke was discharged in the course of and as a part of its operations in burning automobile bodies, of which it appears defendant Hochman was in charge as an officer and manager. But as to defendant Olmstead, it appears only that he was secretary to the corporation, and that he had conversation with an inspector of the Air Pollution Control District and wrote him a letter showing that he had knowledge of these burning operations and that the corporation desired and expected to stop these operations soon. There is nothing to show that he had any control over these operations. The secretary of a corporation, merely as such, is a ministerial officer, without authority to transact the business of the corporation upon his independent volition and judgment. (6A Cal. Jur. 1162; and see Walsh v. American Trust Co. (1935), 7 Cal. App. 2d 654, 659.) "An officer of a corporation is not criminally answerable for any act of

a corporation in which he is not personally a participant." (People v. Campbell (1930), 110 Cal. App. (Supp.) 783, 789; Otis v. Superior Court (1905), 148 Cal. 129, 131; to same effect, People v. Doble (1928), 203 Cal. 510, 517.)

The judgments against defendants International Steel Corporation and Hochman are affirmed. The judgments against defendant Olmstead are reversed and the cause is remanded to the Municipal Court for a new trial as to him.

BY THE COURT

SHAW
Presiding Judge

We Concur.

BISHOP
Judge

STEPHENS
Judge

APPENDIX C-8

PEOPLE v. FRANK L. ALEXANDER — CR A 2708
May 24, 1951

Affirmed. Appeal from judgment and orders of the Los Angeles Municipal Court, Harold W. Schweitzer, Judge.

CITY ATTORNEY'S SUMMARY OF MATERIAL FACTS BEFORE THE COURT IN THE STATEMENT ON APPEAL.

The defendant was charged with violating the provisions of Section 24242 of the Health and Safety Code, discharging into the atmosphere an air contaminant, on two separate occasions. This appeal was taken alleging numerous errors occuring during the trial.

MEMORANDUM OPINION
(Prepared by Court)

Defendant has not included in his statement or in his briefs any showing of the oral instructions given or requested, as required by Rule 4(c) of Rules on Appeal from Municipal Courts and Inferior Courts in Criminal Cases. Therefore, we will not consider the points made as to the court's failure to give instructions.

Given instruction 18 correctly states that "It is the act itself and not the guilty intent that determines guilt." Intent is not an element of the offense as defined in Health and Safety Code, section 24242. "As used in this chapter, 'air contaminant' includes smoke ..." (Health and Safety Code, sec. 24208)

Given instruction #7 adequately instructs on circumstantial evidence.

Given instruction #3 states: "The People and the defendant are entitled to the individual opinion of each juror."

In the case of People etc. v. International Steel Corp. etc. et al (1950), CR A 2654, this court held Health and Safety Code section 24242 to be constitutional and ruled upon many questions similar to the ones raised in this appeal. Defendant has urged nothing that causes us to change the opinions expressed therein.

Defendant's claims of error in the Court's rulings on offered evidence are notable for number, e.g., "Court erred in every instance," but not for support thereof by defendant, either by citation of authorities or argument. "Under such circumstances a court of review will not search a record for the purpose of finding something on which to base an order of reversal". (Everts v. Sunset Farms, Inc. (1937), 9 Cal. 2d 691, 700.)

Examination of the relatively few rulings complained of, and about which counsel for the defendant has made some comment, reveals only one

that has any merit. His objection, first, to testimony about a statement in a Bureau of Mines publication that it is possible for a trained person to test smoke's density according to the Ringelmann Chart without using the chart, and then his objection to the introduction of the statement itself, were well taken; the statement is plainly hearsay relative to the fact it sets forth. However, in view of the other evidence in the case, we consider the error to be without prejudice. In our opinion in People v. International Steel Corp. (1950), 102 A.C.A. 138, 226 P. 2d 587, we did not pass upon the question now presented. None of the other points commented upon by the defendant, respecting the rulings on the evidence, has merit; certainly none reveals prejudicial error. Of the more than two pages of references to places in the transcript claimed to be erroneous, introduced by the words, "other erroneous rulings are found as follows, "we examined a few and concluded, as the defendant did, that they were not worthy of comment.

Defendant's offers of proof, to which objections were sustained, bore no relation to any of the essential elements of the charged violations of Health and Safety Code Section 24242, and were properly excluded.

The claimed acts of prejudicial misconduct of the deputy city attorney, if any, during the presentation of evidence and during his argument to the jury, does not appear to be such that admonitions from the court instructing the jury to disregard the same would not have made them innocuous. During the trial defendant made no objections thereto and did not request the court to either admonish the deputy city attorney or to instruct the jury to disregard them. Therefor, "they may (not) be assigned, on appeal, as reversible error". (People v. Fisher (1948), 86 Cal. App. 2d 24, 33.)

The probation officer's report was not made a part of the record on appeal. We must therefore assume that the facts recited by the court, at the time of sentence, that were not supported by the evidence, were sufficiently supported by that report. Their nature would so indicate.

The sentence imposed was authorized by statute and the trial court's determination thereof is conclusive. (See People v. Schafer (1911), 161 Cal. 573, 580.

The judgment and the order denying motion for a new trial are affirmed. The appeal from the order denying motion in arrest of judgment is dismissed.

VICKERS
Judge

We concur.

BISHOP
Acting Presiding Judge

STEPHENS
Judge

APPENDIX C-10

PEOPLE v. V. W. PLUMB — CR A 2766
PEOPLE v. INLAND PETROLEUM COMPANY, etc., et al — CR A 2764
October 30, 1951

Affirmed. Appeals from judgments and orders of the Pasadena Municipal Court, William E. Fox, Judge.

The pertinent facts in this case are contained in the opinion.

MEMORANDUM OPINION
(Prepared by Court)

These two cases were tried together before a jury, and with them was also tried People v. Inland Petroleum Company, CR A 2765, which is this day disposed of by a separate opinion. The defendents appeal in all the cases from judgments rendered against them on verdicts of guilty and from orders denying their motions for new trials.

In the two cases which are the subject of this opinion the offenses charged were the same; that is, violation of Section 20849 of the Business and Professions Code, and the alleged dates of the offenses were the same. As will appear from the evidence, but one offense is claimed to have been committed and prosecution seeks to hold the defendants in both cases responsible for it.

Section 20849 above cited provides, omitting some words not affecting the charge made in the complaints; "It is unlawful for any person to deposit or deliver into any tank pump, container . . . at any place where petroleum products are kept or stored for sale, any . . . motor oil, other than that indicated by the brand, trademark, trade name, and in the case of lubricating oil or motor oil, the S. A. E. classification number, displayed on the tank, pump, container . . ." The letters S. A. E. appearing here are so commonly used by those selling motor oil, that it would seem their meaning has become a matter of common knowledge of which the courts can take judicial notice; but, if not, the matter is fully explained by Section 20840, Business and Professions Code, so as to leave no uncertainty in the meaning of Section 20849. The complaints charged that the oil delivered by defendants into the container was not of the kind indicated by the label, either in brand or in S. A. E. classification number.

The complaint in CR A 2764 names as defendants "Inland Petroleum Company, a partnership, & R. R. Felnagle & G. W. McClellan, Partners." At the close of the trial the court gave the jury an instruction at the defendant's request advising them to acquit the defendant Inland Petroleum Company, a partnership, for the reason that a partnership is not such a person as may be charged with or convicted of crime." Acting on this instruction the jury returned a verdict finding the defendant named in it not guilty. At the same time they returned a verdict finding "the defendants R. R. Felnagle and G. W. McClellan" guilty.

APPENDIX C-11

PEOPLE v. V. W. PLUMB — CR A 2766
PEOPLE v. INLAND PETROLEUM COMPANY, etc. — CR A 2764

It is argued that here are inconsistent verdicts. But the law is settled that "in so far as criminal responsibility is concerned, a partnership is not recognized as a person separate from its component members... and therefore cannot commit a crime ... the delinquent members of the firm are responsible for the acts of the copartnership, and may be proceeded against for criminal offenses committed as copartners." (People v. Schomig (1925), 74 Cal. App. 109, 113; to the same effect, see In re Casperson (1945), 69 Cal. App. 2d 441, 443.) The verdict in favor of the partnership cannot be regarded as a determination on the question of guilt, since it was in favor of a mere name, not recognized as having a legal existence, and was given in pursuance of an instruction stating such a reason for it. A dismissal of the action as to that defendant would have been a better way to deal with the situation, but under the circumstances no greater effect should be given the verdict.

The appellants contend that, for several reasons, the evidence is insufficient to support the verdicts. Looking into the record we find evidence tending to show the facts hereinafter stated.

The defendants Felnagle and McClellan were copartners doing business as such under the name of Inland Petroleum Company. A part of the business of this partnership was the distribution and sale of oil and lubricants to service stations. Defendant Plumb was the manager of this part of the partnership business and had full charge thereof, enjoying the complete confidence of the partners, who apparently devoted very little attention to this part of the business or to Plumb's activities in it. Plumb drove a truck and delivered oil to service stations. The date of the offense charged in each complaint is January 4, 1951. On that date defendant Plumb delivered some oil at Monroe's Service Station in Pasadena, into a container (referred to by the witnesses as a "highboy") on which there was a label "Calmo Motor Oil SAE 40." This Plumb admitted in his testimony at the trial. There is no evidence to show that either defendant Felnagle or defendant McClellan had anything to do with this delivery or ever ordered or authorized it to be made, or even knew of it until after the sample of oil hereinafter mentioned was taken from this highboy.

The witness Call, a Petroleum Products Investigator for the State, testified that he took a sample of oil (Exhibit B) from the highboy at Monroe's Service Station and delivered it to Clark, a state oil chemist, for analysis. Clark testified that he analyzed this sample of oil, that it was S. A. E. 30 oil instead of S. A. E. 40, and that it was not Calmo Oil.

There was testimony regarding a sample of oil taken by Call from another service station, known as Newman's Service Station, but on demand of defendant Plumb the prosecutor elected to stand on the sample taken from Monroe's Service Station to support the charge against Plumb. The

only delivery of oil to Monroe's station shown by the evidence is that above mentioned, made on January 4. It is conceded by all parties that neither of the cases now under consideration is concerned with the oil delivered to Newman's Service Station, that being relied on by the prosecution only in support of the conviction in CR A 2765, and hence we give no further heed here to the sample taken at Newman's.

Appellants contend that the sample at Monroe's was not taken until January 22. Call testified at first that he took the sample on January 4, and he repeated this statement, with increasing doubtfulness, several times. He also testified that he wrote a tag and attached it to the can holding the sample, and on being shown that this tag was dated January 22, he changed his testimony as to the date and stated several times that he took the sample on January 22. Taking Call's testimony as a whole, there is no real conflict in it as to the date. In giving the date of January 4, he did not profess to have any actual memory of the date, but was depending on what his record would show, and when shown his record he testified according to it. Consequently, we accept defendant's contention as to the date of the sampling. This leaves an interval of eighteen days between the placing of oil in the highboy by defendant and the taking of the sample. Appellants further argue that this interval is not accounted for and also that oil from previous deliveries was still in the highboy. But Monroe, the owner of this service station, testified that he did not put any S. A. E. 30 oil in there and that he got oil from no one but the Inland Petroleum Company. The oil chemist, Clark, testified that while the oil in the highboy usually represents a mixture of several previous deliveries, "it is the same type of oil, with the same S. A. E. number."

From all this the jury might properly conclude that the sample taken was representative of the oil delivered by Plumb on January 4, and that this delivery was a violation of the statute on which the complaint was based.

The appellants Felnagle and McClellan contend that they are not criminally responsible for the acts of their agent unless they participated in some way therein, and there being no evidence of such participation on their part here, the evidence is, as to them, insufficient, no matter what conclusion may be reached as to Plumb. As we have seen, they turned the complete control of this part of their business over to Plumb, not apparently exercising any supervision over him. From the evidence it cannot be said, if that were important, that anything he did was in violation of their orders. The principles on which a decision as to the liability of Felnagle and McClellan for the acts of Plumb must rest are declared by In re Marley (1946), 29 Cal. 2d 525, 528-530. That was a case where a merchant had been convicted of a criminal offense because of a short weight sale of meat made by his employee, in violation of Section 12023 of the Business and Professions Code, and had been sentenced to serve a term in jail therefor. His conviction was upheld on habeas corpus, and the court said: "The general rule of law as repeatedly enunciated

and emphasized by the courts of California and of other jurisdictions is that a master or principal before he can be held criminally responsible for the act of an employee or agent must be proved to have 'knowingly and intentionally aided, advised, or encouraged the criminal act.' " ...

"In limited qualification of the general rule, however, legislative bodies in California as well as in other jurisdictions have adopted various statutes positively forbidding certain acts and imposing criminal liability upon the master if the act is knowingly performed by his servant within the scope of the latter's authority. (See 43 L.R.A. (N.S.) 11-37.) Such statutes have dealt with the sale of intoxicating liquor (People v. Fera (1918), 36 Cal. App. 292, 304 [171 P. 1091]; of pure foods and drugs (People v. Schwartz (1937), 28 Cal. App. 2d Supp. 775 [70 P. 2d 1017]; In re Casperson (1945), 69 Cal. App. 2d 441 [159 P. 2d 88]; and with the operating of gaming establishments and of saloons, and have been upheld by the courts (see 43 L.R.A. (N.S.) 11-37; of, 35 Am. Jur. 1042-1043, § 602; 115 A.L.R. 1226-1236; 28 A.L.R. 1382-1394). Other instances in which criminal responsibility has been imposed despite lack of specific knowledge, direction or encouragement by the employer of the criminal act on the part of the servant are listed in Commonwealth v. Mixer (1910), 207 Mass. 141 [93 N.E. 249, 20 Ann Cas. 1152, 31 L.R.A. N.S. 467, 468]." The court in the Marley case then stated a number of "examples" of the cases listed in Commonwealth v. Mixer, cited by it, and then went on to say, at 29 Cal. 2d 529: "Such exceptions are also recognized in the statement of the prevailing principles in 22 Corpus Juris Secundum 150, supra, by the observation that 'under statutes positively forbidding certain acts irrespective of the motive or intent of the actor, a principal or master may be criminally liable for his agent's or employee's act done within the scope of his employment . . . '"

Appellants seek to distinguish the Marley case on the ground that the statute there involved expressly penalized one who "by himself or his employee or agent" did the forbidden acts. But the reasoning of the court as set forth in the opinion does not depend on this distinction and many of the cases cited as authority involve statutes not containing any such provision. Thus the decision of this court in People v. Schwartz (1937), 28 Cal. App. 2d (Supp.) 775, cited with approval in the Marley case, depended on a statute which declared the sale of adulterated food, as defined in the statute, unlawful, without any requirement of wilfulness, knowledge or intent, or any provision declaring a merchant liable for acts of his employees. The defendant was there held liable criminally for the act of his employee in selling adulterated food, done without the knowledge or direction of the defendant. The court said, using language which was quoted in the Marley case: "The fact that the sale of the adulterated food in the instant case was made by an employee of defendant without his personal knowledge or immediate direction is immaterial. The duty placed upon the dealer in foods is absolute within the limits of his control. If he discovered adulterated food in his stock, took it therefrom, carefully locked it up preparatory to destroying it, and if before

consummation of that event it were stolen from him, he obviously would not be guilty of selling adulterated food because there was no sale (although he would still be guilty, if the fact were shown, of having originally kept it for sale); but if he has such food in his stock of goods, whether he knows its condition or not, and has a clerk authorized to make sales from such stock, then any sale made therefrom by such clerk is a sale by the employer, because they are the employer's goods, sold through his agent, and if adulterated food is sold, the crime is his as well as his clerk's; he can delegate authority to sell that which he possesses but he cannot avoid responsibility for what is so sold."
We note that the opinions in the Marley and Schwartz cases were written by the same judge, who was a member of this court when the Schwartz case was decided and is now a justice of the Supreme Court. No doubt he was aware of the full holding in the Schwartz case, and his manner of citing it in the Marley case shows no intent to recede from it.

In re Casperson (1945), 69 Cal. App. 2d 441, 444, also cited with approval in the Marley case, dealt with a statute making unlawful the sale of inedible eggs, and a partner was held criminally liable for a sale made by his copartner in which he did not participate, although the statute contained no provision purporting to make an owner of a business liable for the act of any one else. The court cited the Schwartz case and other cases, and said: "We do not believe it was the legislative intent that a dealer should escape the prohibitions of the act by showing that a clerk made the sale, as in the Schwartz case, or that it was unauthorized or without his knowledge."

Appellants contend that the rule followed in these cases is, or should be, limited to statutes regulating the sale of food and drugs. It is true many of the cases declaring that rule have involved such statutes. But the statute considered in the Marley case was not one regulating such sales; it related to use of weights and measures, no matter to what commodities applied. And several of the cases there cited were decided on statutes regulating other matters than the sale of food or drugs. (See enumeration of cases and their subject matter at 29 Cal. 2d 528.)

Moreover, the principle on which such holdings are based is not limited in its scope to food and drug cases, but is fully capable of application to many other sorts of transactions. It is thus stated in State v Weisberg (1943), 74 Ohio App. 91, 55 N.E. 2d 870, 872, quoted in the Marley case at 29 Cal. 2d 529: " 'There are many acts that are so destructive of the social order, or where the ability of the state to establish the element of criminal intent would be so extremely difficult if not impossible of proof, that in the interest of justice the legislature has provided that the doing of the act constitutes a crime, regardless of knowledge or criminal intent on the part of the defendant.' "

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In People v. Boggs (1945), 69 Cal. App. 2d (Supp.) 819, 822, this court made the following statement, which was quoted with approval in the Marley case; "Neither knowledge nor an intent to defraud is made a condition of the statute, with the result that the act of selling misbranded goods constitutes the offense, though done, as it doubtless was in the case before us, both in happy ignorance of the fact that the legend on the sacks was incorrect and without any intention of defrauding anyone," See also U.S. v. Balint (1922), 258 U.S. 256, 66 L. ed. 604, where similar views were expressed.

The statute here involved likewise fails to make knowledge or intent to defraud an element of the offense, and hence the Boggs case is sufficient authority here for upholding the conviction of Plumb, even though he denied putting into the highboy any oil not in accord with the label and so may have been in "happy ignorance" of his guilt.

We conclude that his employers also may be held liable, though possibly in even happier ignorance, on the theory set forth in the Marley case and the other cases there cited. We see no sufficient ground for distinguishing the statute here in question from those there considered. All purport to impose an absolute liability without regard to knowledge or intent. All relate to matters where proof of knowledge or intent would be difficult if not impossible for the prosecution. All relate to matters which require regulation in the interest of the general public; matters regarding which the public to be protected would be unable to ascertain the actual facts of regulation were nonexistent or unenforceable. All relate to matters from which great and widespread harm to many persons might result from the sale of sub-standard commodities. Motor oil may not be so important to the existence of the human race as food, but in these days of general ownership of motor vehicles and general reliance upon them for transportation for all sorts of purposes, maintenance of good quality in motor oil has become a matter of great importance and we feel justified in applying to a statute like this one which is intended to promote and facilitate the maintenance of good quality in such oil, the same rules of construction which are applied to food adulteration statutes in some of the cases above cited. For these reasons we hold that the evidence is sufficient as to Felnagle and McClellan and that the court did not err in refusing their requested instructions based on the general rule above discussed, of non-liability of an employer for acts of his employees.

Appellants contend also that the testimony of Clark that the oil sample taken by Call was not Calmo, had no sufficient foundation showing his knowledge of Calmo oil. He testified that he had analyzed a sample of oil, Exhibit D, taken by Call from the place of business where defendant worked and labeled there as Calmo, as well as various samples of oil brought to him within a period of six months as being Calmo oil. The point of the argument is that Clark had not taken any of these samples himself, and the statements of the persons who brought them to him that

they were Calmo oil were hearsay and therefore not competent as proof of the brand of oil which Clark had tested to learn the characteristics of Calmo oil. This argument fails as to the sample, Exhibit D, for the witness Call testified that he took it from a container labelled "Calmo" at the place where defendant worked and delivered it to Clark for examination. This is sufficient to show Clark's knowledge of Calmo oil. His testimony as to its characteristics was also corroborated by that of Swayne, an employee of Hancock Oil Company, the distributor of Calmo oil, who testified to several of the technical specifications of Calmo oil in substantial agreement with Clark. There was no evidence contrary to Clark's conclusions.

As to other samples testified by him, it does not appear that they gave any materially different results from those obtained on the test of Exhibit D; in fact, Clark said they did not. It may be that these samples were not sufficiently identified; but if so, the error in admitting them was not prejudicial, because, as already stated, he showed otherwise a sufficient knowledge of Calmo oil to enable him to testify regarding it, he gained no additional knowledge from these samples, and his testimony was otherwise corroborated and not disputed. Moreover, this objection would not be good against Clark's testimony that Exhibit D was not S. A. E. 40 oil, for that did not depend on an analysis of the other oil samples; and this testimony alone would support the conviction, as far as the quality of the oil is concerned.

An instruction requested by defendants and refused (No. 23) would have told the jury that the prosecution had elected to stand upon the transaction at Monroe's Service Station in the case against defendant Plumb and they could not consider against him anything occurring at Newman's Service Station. Such an instruction would have been proper, in view of the election above referred to. But the election was made openly, in the presence of the jury, after a discussion of the reasons and necessity therefor which occupies three pages of the reporter's transcript and was participated in by counsel on both sides and by the court, and during which the prosecutor stated: "That's right - any testimony regarding Newman's is not offered with regard to Plumb, at all . . . The only case that concerns defendant Plumb is the Monroe's Station." Substantially, the first of these statements was made twice by the presecutor during the discussion, and was thereafter repeated by him and stated by the court. We think the jury must have understood that an election was made, so that defendant Plumb was not prejudiced by failure to give the instruction regarding it.

Appellants also object to the giving of instructions on the law of conspiracy and the liability of one conspirator for the acts of another, claiming that there was no evidence to which such instructions could be applied. As far as Plumb is concerned, these instructions should not

have been given, but we think he was not prejudiced by them for the reason that his conviction rests on acts done by him personally and the jury's consideration of the evidence relating to them could not have been influenced by these instructions. As to the other appellants, their liability as above stated for the acts of Plumb is not dependant upon the existence of any conspiracy between him and them and hence the giving of the instruction complained of was not prejudicial to them.

Each of the appellants produced some evidence of his good reputation "as an honest, law abiding citizen." That respecting defendant Plumb was too limited to be worthy of consideration. They now complain that the court refused to give an instruction requested by them (No. 24) to the effect that such evidence is relevant to the question of guilt and may be sufficient to create a reasonable doubt. This instruction is a partial copy of CALJIC No. 32, and we assume it to be a correct statement of the law as far as it goes, notwithstanding part of the instruction set forth in CALJIC is omitted. But upon the circumstances of this case and the legal basis on which appellants are responsible we think no miscarriage of justice resulted from its refusal.

Appellant Plumb admitted the delivery of oil upon which the charge against him was based. The only fact necessary to establish the charge against him beyond those admitted by him was the quality of the oil delivered, no proof of guilty intent being required. The jury's conclusion as to this fact could not properly be affected by his good reputation as an honest, law abiding citizen. To be sure, the evidence on the quality of the oil was conflicting, Plumb denying that the oil he delivered was other than what it purported to be. But the instruction refused did not relate to the effect of the reputation shown on his testimony as a witness. Testimony of the good reputation of a witness cannot be used to bolster his testimony unless his veracity has been attacked by testimony tending to impeach it, which had not been done here. (People v. Sellas (1931), 114 Cal. App. 367, 372-376, and cases there cited.) Like Plumb, the other appellants were not entitled to have this evidence considered in determining the credibility of their testimony. Their guilt of the charge did not depend on anything done by them personally nor on any intent or knowledge on their part and hence good reputation would not afford a ground for doubting their guilt.

Appellants make several other points regarding the giving and refusal of instructions. We have considered all of them, but do not deem it necessary to discuss them all here, since we find no prejudicial error in those not discussed.

We cannot, however, approve the reason assigned by the trial court for refusing some of them, that is, that they were presented too late, under a rule of court requiring instructions to be "presented ... before the taking of testimony." Manifestly, no one can know at this stage of a trial, all the instructions that may become necessary or desirable during its progress. The rule recognizes this fact in its

proviso that "additional instructions may be presented when the occasion therefor arises at a later time", but the trial court appears to have paid no attention to this proviso in rejecting the instructions just mentioned. This rule is stricter than Section 607a, C.C.P. regarding instructions in civil cases, which is not applicable to criminal cases. (People v. Emmett (1932), 123 Cal. App. 678, 682; People v. Fink (1932), 121 Cal. App. 14, 16-17.) The latter are governed by Section 1127 Penal Code (People v. Fink, supra) which was made applicable to jury trial in municipal courts, at the time of the trial, by Section 1461a, Penal Code, and will continue to be so applicable by virtue of Section 690 added to the Penal Code in 1951. A rule requiring presentation of instructions in criminal cases before argument has been declared to be proper as a general rule (People v. Lang (1904), 142 Cal. 482, 486; People v. Silva (1898), 121 Cal. 668, 670; People v. Demasters (1895), 105 Cal. 669, 673), but its propriety has also been doubted (People v. Williams (1867), 32 Cal. 280, 286, where the subject was extensively discussed.) But the cases cited approving the rule agree substantially with People v. Lang, supra, in its holding that "the rule will not justify the court in refusing to give a proper instruction upon a point in the case material to the defendant which has not been given elsewhere." People v. Blanks (1944), 67 Cal. App. 2d 132, 137, while not expressly approving or disapproving a rule relied on there as reason for refusing an instruction, held it was in error to refuse an instruction, offered too late under the rule, on a matter which arose after the jury had been instructed, on a juror's request.

We note that People v. Brown (1938), 27 Cal. App. 2d 612, 617, appears to regard noncompliance with a rule fixing the time for presenting instructions as a sufficient reason for refusing an instruction in a criminal case, but we note also that the authorities cited in support of that holding are all civil cases, and that it is clearly inconsistent with the cases we have already cited. We therefore do not accept it as controlling authority.

The rule relied on here is, perhaps, inconsistent with Section 1127, Penal Code, which provides that "either party may present to the court any written charge on the law," without fixing a time limit for such presentation, and requires the court to give a correct and pertinent instruction so presented. But regardless of such inconsistency, we think the rule cannot be relied on as a ground for refusing any proper instruction, at least as to a point whose materiality or importance has become evident during the trial.

Appellants further contend that the complaint is defective in that it does not disclose the particular place where the acts charged were committed, merely stating that they were done in the City of Pasadena. Section 1426 of the Penal Code requires such a complaint to set forth such particulars of place as to enable the defendant to answer the complaint, and perhaps there is an uncertainty in the complaint in this respect. But the defendants did answer by pleading not guilty, on Plumb's request the prosecution elected the precise place on which it relied as

to him, and it does not appear that any of the appellants suffered any prejudice from the failure of the complaint to specify the place more precisely. No miscarriage of justice appears to have resulted from this defect, if it be such, in the complaint.

Moreover, Section 1428.1, Penal Code, makes it a ground of demurrer that the complaint does not substantially conform to the requirements of Section 1426, and provides that failure to make any objection by demurrer shall be a waiver thereof, except the objections to the jurisdiction of the court, and that no public offense is charged. Here there was no demurrer to the complaint, and the objection now made is not within either of the excepted classes. It has therefore been waived, and cannot be raised on appeal. (People v. Matuszewski (1903), 138 Cal. 533, 536; People v. Dean (1924), 66 Cal. App. 602, 606.)

The judgements and the orders appealed from in the two cases listed at the head of this opinion are affirmed.

SHAW
Presiding Judge

I concur

BISHOP
Judge

APPENDIX D-1

D: SAMPLE QUESTIONS TO ESTABLISH INSPECTOR AS AN EXPERT WITNESS

AIR POLLUTION CONTROL DISTRICT - COUNTY OF LOS ANGELES

ENFORCEMENT DIVISION

PROSECUTION OF AIR POLLUTION COURT CASES 16-40M419

Qualification of the Inspector as an Expert Witness

Below are a list of questions that are normally asked by either the County Counsel at the Hearing Board or by the Prosecuting Attorney during a Criminal Court Case. These questions have as their purpose the qualification of each witness as an expert in the reading of visible air contaminants without the necessity of the expert smoke reader physically hanging a Ringelmann Smoke Chart near the source. All personnel of the District who have occasion to testify relative to "Smoke Readings" should familiarize themselves with the questions which are asked, and be certain of correct answers to each of the questions below.

FOUNDATION:

1. By whom are you employed?

2. How long?

3. Prior to your employment with the Air Pollution Control District, did you have any college or university work? What? Graduate work? Degree?

4. Did you have any prior employment which would be of value in your present position?

5. While with the Air Pollution Control District did you attend a training course referred to as "Smoke School"?

6. During your attendance at "Smoke School", did you learn methods of reading smoke?

7. Length of time in training as Inspector.

8. Number of smoke readings? How many days attendance?

9. Did you learn to read black smoke?

10. By what means? (Ringelmann Chart).

(Continued, next page)

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11. Get chart marked for identification as people's exhibit #1.

12. Describe physical apparatus used in learning to read smoke.

13. Give the use of apparatus (smoke generator) and Ringelmann Chart.

14. Have witness explain the various Ringelmann numbers and show which are the darkest in shade. (Go through each number).

15. Did you learn to read any other color than black?

16. By what terms do you read smoke other than black smoke? (Opacity).

17. Did you learn to read smoke without the use of the Ringelmann Chart?

18. Define "Opacity." (If other than black smoke) (Quality of a substance to obstruct the view)

19. How did you learn to read smoke that was other than black smoke? (Personally made comparisons.)

20. Were you required to attain a certain degree of proficiency before being graduated from Smoke School?

21. How great: (Plus or minus 10% or 1/2 Ringelmann number, example.)

22. Do you recall your own personal proficiency?

23. Subsequent to completion of Smoke School, did you go into the field with qualified Inspectors and Senior Inspectors? Alone?

24. Have you testified in court before as an expert?

FINISH OF FOUNDATION:

TO SPECIFIC CASE

1. On date and location, were you on duty as Inspector? (County of L.A.)

2. What directed your attention to this location? (Tell what you saw.)

3. Where were you when you first saw it?

4. Could you determine the source of emission?

5. Describe the premises.

6. Did you make any readings? What time commenced? What time concluded? Ringelmann number or opacity?

(Continued, next page)

7. Did you see what was the source of the smoke?

8. Any conversation? With defendant?

9. Introduce Ringelmann Chart into evidence (by reference).

APPENDIX E-1

RINGELMANN SMOKE CHART

(Revision of IC 7718)

By Staff, Bureau of Mines

information circular 8333

UNITED STATES DEPARTMENT OF THE INTERIOR
Stewart L. Udall, Secretary

BUREAU OF MINES
Walter R. Hibbard, Jr., Director

APPENDIX E-2

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APPENDIX E-3

RINGELMANN SMOKE CHART

(Revision of 1C 7718)

by

Staff, Bureau of Mines[1]

ABSTRACT

The Ringelmann Smoke Chart fulfills an important need in smoke abatement work and in certain problems in the combustion of fuels. A knowledge of its history and method of preparation is, therefore, of interest to many. Since instructions on its use are not shown on the recent edition of the chart, those included in this revision of the previous Bureau of Mines publication now are a necessary complement to the chart. More detail regarding the use of the chart is included than was given in the earlier version.

INTRODUCTION

The Ringelmann Smoke Chart, giving shades of gray by which the density of columns of smoke rising from stacks may be compared, was developed by Professor Maximilian Ringelmann of Paris. Ringelmann, born in 1861, was professor of agricultural engineering at l'Institute National Agronomique and Director de la Station d'Essais de Machines in Paris in 1888, and held those positions for many years thereafter.

The chart apparently was introduced into the United States by William Kent in an article published in Engineering News of November 11, 1897, with a comment that he had learned of it in a private communication from a Bryan Donkin of London. It was said to have come into somewhat extensive use in Europe by that time. Kent proposed in 1899 that it be accepted as the standard measure of smoke density in the standard code for power-plant testing that was being formulated by the American Society of Mechanical Engineers.

The Ringelmann Chart was used by the engineers of the Technologic Branch of the U.S. Geological Survey (which later formed the nucleus of

(Continued, next page)

[1]Office of the Director of Coal Research, Washington, D. C.

the present Bureau of Mines) in their studies of smokeless combustion beginning at St. Louis in 1904, and by 1910, it had been recognized officially in the smoke ordinance for Boston passed by the Massachusetts Legislature.

The chart is now used as a device for determining whether emissions of smoke are within limits or standards of permissibility (statutes and ordinances) established and expressed with reference to the chart. It is widely used by law-enforcement or compliance officers in jurisdictions that have adopted standards based upon the chart.

In 1908, copies of the chart were prepared by the Technologic Branch of the Geological Survey for use by its fuel engineers and for public distribution. Upon its organization in 1910, the Bureau of Mines assumed this service together with the other fuel-testing activities of the Technologic Branch.

DESCRIPTION AND METHOD OF PREPARING THE CHART

The Ringelmann system is virtually a scheme whereby graduated shades of gray, varying by five equal steps between white and black, may be accurately reproduced by means of a rectangular grill of black lines of definite width and spacing on a white background. The rule given by Professor Ringelmann by which the charts may be reproduced is as follows:

Card 0--All white.

Card 1--Black lines 1 mm thick, 10 mm apart, leaving white spaces 9 mm square.

Card 2--Lines 2.3 mm thick, spaces 7.7 mm square.

Card 3--Lines 3.7 mm thick, spaces 6.3 mm square.

Card 4--Lines 5.5 mm thick, spaces 4.5 mm square.

Card 5--All black.

The chart, as distributed by the Bureau of Mines, provides the shades of cards 1, 2, 3, and 4 on a single sheet, which are known as Ringelmann No. 1, 2, 3, and 4, respectively. Additional copies of the chart may be obtained free by applying to the Publications Distribution Branch, Bureau of Mines, 4800 Forbes Avenue, Pittsburgh, Pa. 15213.

USE OF CHART

Many municipal, state, and federal regulations prescribe smoke-density limits based on the Ringelmann Smoke Chart, as published by the Bureau of Mines. Although the chart was not originally designed for regulatory purposes, it is presently used for this purpose in many jurisdictions

where the results obtained are accepted as legal evidence.

While the chart still serves a useful purpose, it should be remembered that the data obtained by its use is empirical in nature and has definite limitations. The apparent darkness or opacity of a stack plume depends upon the concentration of the particulate matter in the effluent, the size of the particulate, the depth of the smoke column being viewed, natural lighting conditions such as the direction of the sun relative to the observer, and the color of the particles. Since unburned carbon is a principal coloring material in a smoke column from a furnace using coal or oil, the relative shade is a function of the combustion efficiency.

While the Ringelmann Smoke Chart has many limitations, it gives good practical results in the hands of well-trained operators. However, it is questionable whether results should be expressed in fractional units because of variations in physical conditions and in the judgement of the observers.

To use the chart, it is supported on a level with the eye, at such a distance from the observer that the lines on the chart merge into shades of gray, and as nearly as possible in line with the stack. The observer glances from the smoke, as it issues from the stack, to the chart and notes the number of the chart most nearly corresponding with the shade of the smoke, then records this number with the time of observation. A clear stack is recorded as No. 0, and 100 percent black smoke as No. 5.

To determine average smoke emission over a relatively long period of time, such as an hour, observations are usually repeated at one-fourth or one-half minute intervals. The readings are then reduced to the total equivalent of No. 1 smoke as a standard. No. 1 smoke being considered as 20 percent dense, the percentage "density" of the smoke for the entire period of observation is obtained by the formula:

$$\frac{\text{Equivalent units of No. 1 smoke} \times 0.20 \times 100}{\text{Number of observations}} = \text{percentage smoke density.}$$

A convenient form for recording and computing the percentage of smoke density appears at the end of this report. This procedure is often used on acceptance tests of fuel-burning equipment.

The timing and extent of observations made for the purpose of determining compliance with a local smoke abatement ordinance depends upon the wording and smoke limitations of the ordinance.

(Continued, next page)

Location.....

Hour 9:00 - 10:00 A.M. Date.....

9		0	1/4	1/2	3/4		0	1/4	1/2	3/4
	0	-	-	-	-	30	1	1	1	1
	1	-	-	-	-	31	1	1	1	1
	2	-	-	-	-	32	-	-	-	-
	3	1	1	1	1	33	-	-	-	-
	4	1	1	1	1	34	-	-	-	-
	5	2	2	2	2	35	1	1	1	1
	6	2	3	3	3	36	1	1	1	1
	7	3	3	3	3	37	1	1	1	1
	8	2	2	1	1	38	1	1	-	-
	9	1	1	-	-	39	-	-	-	-
	10	-	-	-	-	40	-	-	-	-
	11	-	-	-	-	41	-	-	-	-
	12	-	-	-	-	42	-	-	-	-
	13	-	-	-	-	43	-	-	-	-
	14	-	-	-	-	44	1	1	2	2
	15	-	-	-	-	45	2	2	3	3
	16	-	-	-	-	46	3	3	3	3
	17	-	-	-	-	47	3	3	4	3
	18	-	-	-	-	48	2	2	2	2
	19	2	2	2	2	49	2	2	2	2
	20	2	2	2	2	50	2	1	1	1
	21	2	2	2	2	51	1	1	1	1
	22	3	3	3	3	52	1	1	1	-
	23	3	4	4	4	53	-	-	-	-
	24	4	5	5	5	54	-	-	-	-
	25	5	5	5	5	55	-	-	-	-
	26	4	4	3	3	56	-	-	-	-
	27	3	3	3	3	57	-	-	-	-
	28	2	2	1	1	58	-	-	-	-
	29	1	1	1	1	59	-	-	-	-

Point of Observation

.....

Distance to stack,.....

Direction of stack.....

Direction of wind.....

Velocity of wind.....

Equiv. No. 1 Units

7 .... Units No. 5..... 35

7 .... Units No. 4..... 28

27 .... Units No. 3..... 81

34 .... Units No. 2..... 68

52 .... Units No. 1..... 52

113 .... Units No. 0..... 0

240 .... Units 264

$\frac{264}{240}$ x 20 pct =

22 pct ..... Smoke density

Observer.....

Checked by.....

APPENDIX F-1

GLOSSARY OF LEGAL REFERENCE TERMS

ARRAIGNMENT - In criminal practice. To bring a prisoner to the bar of the court to answer the matter charged upon him in the indictment. The arraignment of a prisoner consists of calling upon him by name, and reading to him the indictment, and demanding of him whether he be guilty or not guilty, and entering his plea.

CIVIL ACTION - An action wherein an issue is presented for trial formed by averments of complaint and denials of answer or replication to new matter; an adversary proceeding for declaration, enforcement, or protection of a right, or redress, or prevention of a wrong. Every action other than a criminal action.

CRIMINAL ACTION - Whole or any part of procedure which law provides for bringing offenders to justice. The proceeding by which a party charged with a public offense is accused and brought to trial and punishment. A criminal action is (1) an action prosecuted by the state as a party, against a person charged with a public offense. for the punishment thereof; (2) an action prosecuted by the state, at the instance of an individual, to prevent an apprehended crime, against his person or property.

DEFENDANT - The person defending or denying; the party against whom relief or recovery is sought in an action or suit.

EX PARTE - On one side only; by or for one party; done for, in behalf of, or on the application of, one party only.

HABEAS CORPUS - The name given to a variety of writs having for their object to bring a party before a court or judge.

INJUNCTION - A prohibitive writ issued by a court of equity, at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act, or to permit his servants or agents to do some act, which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at law. A judicial process operating in personam and requiring person to whom it is directed to do or refrain from doing a particular thing.

MISDEMEANOR - Offenses lower than felonies and generally those punishable by fine or imprisonment otherwise than in penitnetiary. In APEX, a misdemeanor shall be punishable by a fine of up to and inclusive of $500 per offense and/or a sentence of up to and inclusive of six (6) months in the county jail.

NOLO CONTENDERE - The name of a plea in a criminal action having the same legal effect as a plea of guilty, so far as regards all proceedings on the instrument, and on which the defendant may be sentenced.

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PLAINTIFF - A person who brings an action; the party who complains or sues in a personal action and is so named on the record.

STAY OF EXECUTION - The stopping or arresting of execution on a judgement, that is of the judgement-creditor's right to issue execution, for a limited period.

SUBPOENA - A process to cause a witness to appear and give testimony, commanding him to lay aside all pretenses and excuses, and appear before a court or magistrate therein named at a time therein named at a time therein mentioned to testify for the party named under a penalty therein mentioned.

SUBPOENA DUCES TECUM - A process by which the court, at the instances of a suitor, commands a witness who has in his possession or control some document or paper that is pertinent to the issues of a pending controversy, to produce it at the trial.